

No. 14740

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United States  
Court of Appeals  
for the Ninth Circuit

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RUTH STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

CY STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of The Tax Court  
of the United States

FILE

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United States  
Court of Appeals  
for the Ninth Circuit

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VS.

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# Transcript of Record

# Petition to Review a Decision of The Tax Court of the United States

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Washington, D. C.,

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Chief Counsel,

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Special Attorney,  
Internal Revenue Service,  
Washington 25, D. C.,  
Counsel for Respondents.



The Tax Court of the United States

Docket No. 37940

RUTH STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION

The above-named Petitioner hereby Petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:99D:CTF) dated September 21, 1951, and as a basis of this proceeding, alleges as follows:

1. The Petitioner is an individual with residence at 126 Stonehaven Way, Los Angeles, California. The returns for the periods here involved, were filed with the Commissioner for the 6th District of California at Los Angeles, California.

2. The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to the Petitioner on September 21, 1951.

3. The deficiencies and penalties, as determined by the Commissioner, all of which are in controversy, are as follows:

Year		Deficiency	50% Penalty
1943	Income and victory tax.....	\$51,923.66	\$25,961.83
1944	Income tax .....	18,970.12	9,485.06
Total.....		\$70,893.78	\$35,446.89

4. The determination of tax set forth in the said

notice of deficiencies is based upon the following errors:

(a) The Commissioner erred in determining that the net income from the business of Petitioners husband for the taxable year 1943, was \$160,492.21, and in increasing Petitioners income by the community half or \$80,246.10.

(b) The Commissioner erred in failing to determine that Petitioner's husband incurred a net loss from the operation of his business for the taxable year 1943 in the amount of \$8,788.28, and that Petitioners community half of said loss was \$4,394.14.

(c) The Commissioner erred in determining that the net income from the business of the Petitioner's husband for the taxable year 1944 was \$75,615.24 and that Petitioners community half was \$37,807.62.

(d) The Commissioner erred in failing to determine that Petitioner's husband incurred a loss in the operation of his business for the taxable year 1944 in the amount of \$64,578.45 and that Petitioners community half was \$32,293.72.

(e) The Commissioner erred in failing to determine that Petitioner is entitled to a carry-back of her community half of said operating loss of \$32,293.72 in computing her net income for 1943.

(f) The Commissioner erred in asserting a penalty of 50% in the amount of \$25,961.83 for the year 1943 and \$9,485.06 for the year 1944, or a penalty in any amount.

5. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

(a) During the taxable years, the Petitioner's

husband was engaged in the business of brokerage of liquor wholesale. The business consisted of buying liquor from rectifiers and distillers through the South Pacific Wholesale Company of 7358 $\frac{1}{2}$  Beverly Blvd., Los Angeles, California. The liquor was delivered to and billed to said South Pacific Wholesale Company. Petitioner's husband solicited orders from customers and turned said orders over to South Pacific Wholesale Company, which filled the orders. All expenses of handling were paid by Petitioner's husband and the South Pacific Wholesale Company received \$2.00 per case as handling fee.

(b) During the year 1943, Petitioner's husband sold liquor through the South Pacific Wholesale Company in the amount of \$172,016.56. The cost of the goods sold was \$144,026.96. The gross profit was \$27,989.60. Operating expenses totaled \$36,777.88. For the taxable year 1943, Petitioner's husband incurred a net loss of \$8,788.28.

(c) Petitioners community half of said loss was \$4,394.14.

(d) For the taxable year 1944, Petitioner's husband sold liquor through the South Pacific Wholesale Company in the amount of \$249,974.09. The cost of the goods sold was \$203,805.52. The gross profit was \$46,168.57. Operating expenses totaled \$110,756.02. The Petitioner's husband incurred a loss for the taxable year 1944 in the sum of \$64,578.45.

(e) Petitioners community half of said loss was \$32,298.72.



6. The Petitioner is entitled to a carry-back of the net operating losses under the provisions of the Internal Revenue Code.

7. The Petitioner overpaid her income tax for the taxable year 1943 in the amount of \$196.48.

8. The petitioner paid the sum of \$196.48 on March 15, 1944.

9. Prior to March 15, 1947, Petitioner and Respondent executed an agreement extending beyond the time described in Sec. 275 of the Internal Revenue Code, the time within which the Respondent might assess the tax. Such time was subsequently extended by agreement to June 30, 1952.

Wherefore, Petitioner prays that this Court may hear this proceeding and redetermine that there is no deficiency in income tax or penalties due from this Petitioner for the taxable years 1943 and 1944; and that the Petitioner has overpaid her income tax for the year 1943 in the amount of \$196.48, and that said amount was paid within three years before the execution of the agreement by Petitioner and the Commissioner extending the period of assessment of the tax to June 30, 1952; and for such other further relief as Petitioner may be entitled under the law.

/s/ SIDNEY R. REED,  
/s/ CHARLES J. MUNZ, JR.,  
/s/ EDWARD D. FRENCH,  
Counsel for Petitioner

Duly Verified.



EXHIBIT A

Treasury Department, Internal Revenue Service,  
417 South Hill Street, Los Angeles 13, California.

LA:IT:99D:CTF

September 21, 1951

Mrs. Ruth Sterns  
126 Stonehaven Way  
Los Angeles 49, California

Dear Mrs. Sterns:

You are advised that the determination of your income tax and victory tax liability for the taxable year ended December 31, 1943 discloses a deficiency of \$51,923.66, and \$25,961.83 in penalty, and that the determination of your income tax liability for the taxable year ended December 31, 1944 discloses a deficiency of \$18,970.12, and \$9,485.06, in penalty, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los

Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOHN B. DUNLAP,  
Commissioner

Enclosures: Statement, Form of waiver.

### Statement

#### Tax Liability for the Taxable Years Ended December 31, 1943 and 1944

Year	Deficiency	50% Penalty
1943 Income and victory tax.....	\$51,923.66	\$25,961.83
1944 Income tax .....	18,970.12	9,485.06
Total.....	<u>\$70,893.78</u>	<u>\$35,446.89</u>

In making this determination of your income and victory tax and penalty liability careful consideration has been given to the report of examination dated October 27, 1948, to your protest dated August 14, 1950, and to the statements made at the conferences held.

The 50 per cent penalty shown herein is asserted in accordance with the provisions of section 293(b) of the Internal Revenue Code.

## ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$ 1,005.63	\$ 1,005.63
Additional income:		
(a) Business income .....	80,246.11	80,246.11
Total .....	<u>\$81,251.74</u>	<u>\$81,251.74</u>
Decrease in income and allowable deductions:		
(b) Salaries decreased .....	\$ 502.82	\$ 502.82
(c) Contributions allowed .....	37.50	.....
(d) Taxes allowed .....	78.20	.....
(e) Losses allowed .....	87.20	.....
Total .....	<u>\$ 705.72</u>	<u>\$ 502.82</u>
Net income adjusted.....	\$80,546.02	\$80,748.92

## EXPLANATION OF ADJUSTMENTS

(a) It has been determined that your husband's net income from business for the taxable year 1943 is \$160,492.21, your community half of which, \$80,246.10, was not reported in your return.

(b) The salary income reported in your return of \$1,005.63 is decreased by the amount of \$502.82, representing the community half reportable in computing your husband's net income.

(c), (d), and (e) You are allowed deductions for contributions in the amount of \$37.50, taxes of \$78.20, and losses of \$87.20 representing the community half of deductions claimed by your husband.

## COMPUTATION OF INCOME AND VICTORY TAX

Taxable Year Ended December 31, 1943

Income Tax net income adjusted.....	\$80,546.02
Less: Personal exemption .....	500.00
Surtax net income.....	<u>\$79,946.02</u>
Less: Earned income credit .....	1,400.00
Income subject to normal tax.....	<u>\$78,546.02</u>

Normal tax at 6 per cent on \$78,546.02.....	\$ 4,712.76
Surtax on \$79,946.02 .....	43,901.13
<hr/>	
Total income tax .....	\$48,613.89
Net income tax .....	\$48,613.89
Victory tax net income adjusted.....	\$80,748.92
Less: Specific exemption .....	624.00
<hr/>	
Income subject to victory tax.....	\$80,124.92
Victory tax before credit (5% of \$80,124.92) .....	\$ 4,006.25
Less: Victory tax credit—limited to.....	500.00
<hr/>	
Net victory tax .....	3,506.25
<hr/>	
Net income tax and victory tax.....	\$52,120.14
Income tax for 1942.....	\$ None
Correct income and victory tax liability.....	\$52,120.14
Income and victory tax liability shown on return, account No. 8149228 .....	196.48
<hr/>	
Deficiency of income and victory tax.....	\$51,923.66
50% penalty .....	\$25,961.83

### ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1944

Net income as disclosed by return.....	\$ 348.15
Additional income:	
(a) Business income .....	37,807.62
<hr/>	
Total .....	\$38,155.77
Allowable deduction:	
(b) Casualty loss .....	435.00
<hr/>	
Net income adjusted.....	\$37,720.77

### EXPLANATION OF ADJUSTMENTS

(a) It has been determined that your husband's net income from business for the taxable year 1944 is \$75,615.24, your community half of which, \$37,807.62, was not reported in your return.

(b) You are allowed a deduction for a casualty loss in the amount of \$435.00, representing the community half of the loss claimed by your husband.

## COMPUTATION OF TAX

Taxable Year Ended December 31, 1944

Net income adjusted .....	\$37,720.77	
Less: Surtax exemption .....	500.00	
Surtax net income.....	\$37,220.77	
Surtax .....		\$17,853.50
Net income adjusted.....	\$37,720.77	
Less: Normal-tax exemption .....	500.00	
Net income subject to normal tax.....	\$37,220.77	
Normal tax at 3%.....		1,116.62
Correct income tax liability.....	\$18,970.12	
Income tax liability shown on return, account No. 79560628 .....		None
Deficiency of income tax.....	\$18,970.12	
50% penalty .....		\$ 9,485.06

[Endorsed]: T.C.U.S. Filed December 12, 1951.

[Title of Tax Court and Cause No. 37940.]

## ANSWER

The Commissioner of Internal Revenue, by his attorney, Mason B. Leming, Acting Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits, denies and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.



3. Admits that the deficiencies and penalties as determined by the Commissioner are in the amounts set forth in paragraph 3 of the petition, but denies that the full amounts are in controversy.

4. (a) to (f) inclusive. Denies the allegations of error contained in subparagraphs (a) to (f) inclusive, of paragraph 4 of the petition.

5. (a). Admits that during the taxable years the petitioner's husband was engaged in the wholesale liquor business, buying liquor from rectifiers and distillers and selling it to customers on orders which he solicited from said customers. The liquor which petitioner's husband purchased and sold was handled for him by South Pacific Wholesale Company, which accepted delivery of the liquor and filled the orders obtained by petitioner's husband in return for a handling fee paid by him to said company. Denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.

(b) Admits that during the year 1943 petitioner's husband sold liquor through the South Pacific Wholesale Company, but denies that the amounts of gross sales, cost of goods sold, gross profit and operating expenses, as alleged, are correct. Denies that petitioner's husband incurred a net loss for the taxable year 1943.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) Admits that during the taxable year 1944, petitioner's husband sold liquor through the South Pacific Wholesale Company, but denies that the

amount of gross sales, cost of goods sold, gross profit and general operating expenses, as alleged, are correct. Denies that petitioner's husband incurred a loss for the taxable year 1944.

(e). Denies the allegations contained in subparagraph (e) of paragraph 5 of the petition.

6, 7 and 8. Denies the allegations contained in paragraphs 6, 7 and 8 of the petition.

9. Admits the allegations contained in paragraph 9 of the petition.

10. Denies each and every allegation contained in the petition not hereinbefore specifically admitted, qualified or denied.

For further answer to the petition herein, respondent alleges:

11. That the income tax returns filed by the petitioner for the taxable years 1943 and 1944 reported net income and taxes due in the following amounts:

1943: Reported Victory Tax Net Income, \$1,005.63; Reported Income Tax Net Income, \$1,005.63.

1944: Reported Income Tax Net Income, \$348.15.

1943: Reported Victory and Income Taxes Due, \$196.48.

1944: Reported Income Taxes Due, None.

12. That during the years 1943 and 1944 petitioner's husband was in the business of buying and selling liquor, receiving large amounts of net income from said business and petitioner knowingly and fraudulently failed and refused to report, acknowledge or disclose the receipt of said additional

amounts of income, taxes due thereon and all facts and information regarding the receipt of said additional amounts of income, which said additional amounts of income are set forth in the deficiency notice, a copy of which is attached to the petition, and made a part hereof by reference; which said amounts of additional income resulted in the following corrected, adjusted net income and liability:

1943: Correct Adjusted Victory Tax Net Income, \$80,748.92; Correct Adjusted Income Tax Net Income, \$80,546.02; Correct Income and Victory Tax Liability, \$52,120.14.

1944: Correct Adjusted Income Tax Net Income, \$37,720.77; Correct Income Tax Liability, \$18,970.12.

13. That, accordingly, there are due, and there are hereby claimed from the petitioner for the years 1943 and 1944 the deficiencies and penalties as set forth in the notice of deficiency and below:

1943: Deficiency of Income and Victory Tax, \$51,923.66; 50% Penalty, \$25,961.83.

1944: Deficiency of Income Tax, \$18,970.12; 50% Penalty, \$9,485.06.

14. That the said income tax returns for 1943 and 1944 which were filed by petitioner are false and fraudulent and were prepared and filed with intent to evade tax, and therefore, the said deficiencies for the years 1943 and 1944 are due to fraud with intent to evade the true and correct taxes due from the petitioner for said taxable years.

Wherefore, respondent prays that the Court determine the deficiencies and penalties involved here-



in to be the amounts determined by the Commissioner.

/s/ MASON B. LEMING,  
Acting Chief Counsel, Bureau of  
Internal Revenue

Of Counsel:

B. H. Neblett, District Counsel,  
R. E. Maiden, Jr., W. P. Flynn, Jr., Special  
Attorneys, Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed February 8, 1952.

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[Title of Tax Court and Cause No. 37940.]

### REPLY

The petitioner by her counsel, Sidney R. Reed, Charles J. Munz, Jr., and Edward D. French, for reply to the allegations affirmatively set out by the respondent in his answer, admits and denies as follows:

11. Admits the allegations contained in paragraph 11. of the answer.

12. Admits that during the years 1943 and 1944 petitioner's husband was in the business of buying and selling liquor. Denies the remaining allegations contained in paragraph 12. of the answer.

13. Denies the allegations contained in paragraph 13. of the answer.

14. Denies the allegations contained in paragraph 14. of the answer.

15. Denies each and every allegation contained

in the answer not hereinbefore specifically admitted, qualified or denied.

Wherefore, petitioner prays that the deficiencies and penalties requested by the respondent in his answer be denied.

/s/ SIDNEY R. REED,  
/s/ CHARLES J. MUNZ, JR.,  
/s/ EDWARD D. FRENCH,  
Counsel for Petitioner

[Endorsed]: T.C.U.S. Filed March 20, 1952.

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The Tax Court of the United States

Docket No. 37941

CY STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### PETITION

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (LA:IT:90D:CTF) dated September 21, 1951, and as a basis of this proceeding, alleges as follows:

1. The Petitioner is an individual with residence at 126 Stonehaven Way, Los Angeles, California. The returns for the periods here involved, were filed with the Commissioner for the 6th District of California at Los Angeles, California.

2. The notice of deficiency, a copy of which is attached and marked Exhibit A, was mailed to the Petitioner on September 21, 1951.

3. The deficiencies and penalties, as determined by the Commissioner, all of which are in controversy, are as follows:

Year	Deficiency	50% Penalty
1943 Income and victory tax.....	\$49,747.91	\$24,873.96
1944 Income tax .....	18,733.38	9,366.69
Total.....	\$68,481.29	\$34,240.65

4. The determination of tax set forth in the said notice of deficiencies is based upon the following errors:

(a) The Commissioner erred in determining that the net income from Petitioners business for the taxable year 1943, was \$160,492.21, and in increasing Petitioners income by the community half or \$80,-246.10.

(b) The Commissioner erred in failing to determine that Petitioner incurred a net loss from the operation of his business for the taxable year 1943 in the amount of \$8,788.28, and that Petitioners community half of said loss was \$4,394.14.

(c) The Commissioner erred in determining that the net income from the business of the Petitioner for the Taxable year 1944 was \$75,615.24 and that Petitioners community half is \$37,807.62.

(d) The Commissioner erred in failing to determine that Petitioner incurred a loss in the operation of his business for the taxable year 1944.

(e) The Commissioner erred in failing to deter-

mine that Petitioner incurred a loss in the operation of his business for the taxable year 1944 in the amount of \$64,578.45.

(f) The Commissioner erred in failing to determine that Petitioner is entitled to a carry-back of his community half of said operating loss of \$32,293.72 in computing his net income for 1943.

(g) The Commissioner erred in disallowing the amount of \$1,440.59 of the sum of \$2,881.18 reported as a net loss from Commissions for the taxable year 1944.

(h) The Commissioner erred in disallowing contributions to charities in the amount of \$100.00 for the year 1944.

(i) The Commissioner erred in disallowing deductions for taxes in the amount of \$138.60 for the year 1944.

(j) The Commissioner erred in disallowing medical expenses in the amount of \$1,575.00.

(k) The Commissioner erred in failing to credit Petitioner with, or to refund the payment of the sum of \$1,050.00 paid by him in 1944 as his estimated tax for that year.

(l) The Commissioner erred in asserting a penalty of 50% in the amount of \$24,873.96 for the year 1943 and \$9,366.69 for the year 1944, or a penalty in any amount.

5. The facts upon which Petitioner relies as the basis of this proceeding are as follows:

(a) During the taxable years, the Petitioner was engaged in the business of brokerage of liquor wholesale. The business consisted of buying liquor



from rectifiers and distillers through the South Pacific Wholesale Company of 7358½ Beverly Blvd., Los Angeles, California. The liquor was delivered to and billed to said South Pacific Wholesale Company. Petitioners solicited orders from customers and turned said orders over to South Pacific Wholesale Company, which filled the orders. All expenses of handling were paid by Petitioner and the South Pacific Wholesale Company received \$2.00 per case as handling fee.

(b) During the year 1943, Petitioner sold liquor through the South Pacific Wholesale Company in the amount of \$172,016.56. Petitioners cost of goods sold, was \$144,026.96. The gross profit was \$27,989.60. Operating expenses totaled \$36,777.88. For the taxable year 1943, Petitioner incurred a net loss of \$8,788.28.

(c) Petitioners community half of said loss is \$4,394.14.

(d) For the taxable year 1944, Petitioner sold liquor through the South Pacific Wholesale Company in the amount of \$249,974.09. The cost of the goods sold was \$203,805.52. The gross profit was \$46,168.57. The general operating expenses was \$110,756.02. The Petitioner incurred a loss for the taxable year 1944 in the sum of \$64,587.45.

(e) Petitioners community half of said loss is \$32,298.72.

(f) The Petitioner is entitled to a carry-back of the net operating losses under the provisions of the Internal Revenue Code.

(g) Petitioner made donations amounting to

\$100.00 to various charitable organizations during the year 1944.

(h) Petitioner paid California automobile license in the amount of \$13.60 and sales tax in the amount of \$125.00 in the year 1944.

(i) Petitioners medical expenses paid in the year 1944 were \$1,575.00.

(6) The Petitioner overpaid his income tax for the taxable year 1943 in the amount of \$2,372.23.

7. The Petitioner paid the sum of \$2,372.26 on March 15, 1944.

8. The Petitioner paid the sum of \$1,050.00 during 1944 as his estimated income tax liability for that year, no part of which has been refunded to petitioner.

9. Prior to March 15, 1947, Petitioner and Respondent executed an agreement extending beyond the time described in Sec. 275 of the Internal Revenue Code, the time within which the Respondent might assess the tax. Such time was subsequently extended by agreement to June 30, 1952.

Wherefore, Petitioner prays that this Court may hear this proceeding and redetermine that there is no deficiency in income tax or penalties due from this Petitioner for the taxable years 1943 and 1944; and that the Petitioner has overpaid his income tax for the year 1943 in the amount of \$2,372.23 and \$1,050.00 for the year 1944; and that said amounts were paid within three years before the execution of the agreement by Petitioner and the Commissioner extending the period of assessment of the

tax to June 30, 1952; and for such other further relief as Petitioner may be entitled under the law.

/s/ SIDNEY R. REED,  
/s/ CHARLES J. MUNZ, JR.,  
/s/ EDWARD D. FRENCH,  
Counsel for Petitioner

Duly Verified.

EXHIBIT A

Treasury Department, Internal Revenue Service,  
417 South Hill Street, Los Angeles 13, California.

LA:IT:90D:CTF

September 21, 1951

Mr. Cy Sterns  
126 Stonehaven Way  
Los Angeles 49, California

Dear Mr Sterns:

You are advised that the determination of your income tax and victory tax liability for the taxable year ended December 31, 1943 discloses a deficiency of \$49,747.91, and \$24,873.96 in penalty, and that the determination of your income tax liability for the taxable year ended December 31, 1944 discloses a deficiency of \$18,733.38, and \$9,366.69 in penalty, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as

the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA:Conf. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOHN B. DUNLAP,  
Commissioner

Enclosures: Statement, Form of waiver.

### Statement

#### Tax Liability for the Taxable Years Ended December 31, 1943 and 1944

Year	Deficiency	50% Penalty
1943 Income and victory tax.....	\$49,747.91	\$24,873.96
1944 Income tax .....	18,733.38	9,366.69
Total.....	\$68,481.29	\$34,240.65

In making this determination of your income and victory tax and penalty liability careful consideration has been given to the report of examination



dated October 27, 1948, to your protest dated August 14, 1950, to the statements made at the conferences held, to your amended return for 1943 filed on June 21, 1945, and to your second return for 1944 filed on June 21, 1945.

The 50 per cent penalty shown herein is asserted in accordance with the provisions of section 293(b) of the Internal Revenue Code.

### ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$ 9,798.81	\$10,204.61
Additional income and unallowable deductions:		
(a) Business income .....	80,246.10	80,246.10
(b) Contributions decreased .....	37.50	.....
(c) Taxes decreased .....	78.20	.....
(d) Losses decreased .....	87.20	.....
Total .....	\$90,247.81	\$90,450.71
Decrease in income:		
(e) Salaries decreased .....	9,701.79	9,701.79
Net income adjusted.....	\$80,546.02	\$80,748.92

### EXPLANATION OF ADJUSTMENTS

(a) It has been determined that your net income from business for the taxable year 1943 was \$160,492.21 which was not reported in your return. Your community half of this increase to the net income reported in your return is \$80,246.10.

(b), (c), and (d) The deductions claimed for contributions in the amount of \$75.00, taxes of \$156.40 and losses of \$174.40 are disallowed to the extent of \$37.50, \$78.20, and \$87.20, respectively, representing the community half of these items allowable as deductions in computing the net income of your wife.

(e) The salary income of \$10,204.61 reported in your return is decreased by the amount of \$9,701.79, computed as shown below:

(1) Net salary reported in your return eliminated.....	\$ 10,204.61
Your community half of compensation of \$1,005.63 reported in your wife's return.....	502.82
Adjustment .....	\$ 9,701.79

(1) The salary reported in your return is eliminated since it is reflected in adjustment (a) above.

### COMPUTATION OF INCOME AND VICTORY TAX

Taxable Year Ended December 31, 1943

Income tax net income adjusted.....	\$ 80,546.02
Less: Personal exemption .....	600.00
Surtax net income.....	\$ 79,946.02
Less: Earned income credit.....	1,400.00
Income subject to normal tax.....	\$ 78,546.02
Normal tax at 6 per cent on \$78,546.02....	\$ 4,712.76
Surtax on \$79,946.02 .....	43,901.13
Total income tax.....	\$ 48,613.89
Net income tax .....	\$ 48,613.89
Victory tax net income adjusted.....	\$80,748.92
Less: Specific exemption .....	624.00
Income subject to victory tax.....	\$80,124.92
Victory tax before credit (5% of \$80,124.92) .....	4,006.25
Less: Victory tax credit—limited to.....	500.00
Net victory tax .....	3,506.25
Net income tax and victory tax.....	\$ 52,120.14
Income tax for 1942 .....	None
Correct income and victory tax liability.....	\$ 52,120.14
Income and victory tax liability shown on return, account No. 924367 .....	2,372.23
Deficiency of income and victory tax.....	\$ 49,747.91
50% penalty .....	\$ 24,873.96

## ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1944

Net income as disclosed by return (loss).....(\$ 4,124.27)

Additional income and unallowable deductions:

(a) Business income .....	37,807.62
(b) Net loss from commissions eliminated.....	1,440.59
(c) Contributions disallowed .....	100.00
(d) Taxes disallowed .....	138.60
(e) Casualty loss decreased.....	435.00
(f) Medical expenses disallowed.....	1,575.08

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Net income adjusted.....\$ 37,372.62

## EXPLANATION OF ADJUSTMENTS

(a) It has been determined that your net income from business for the taxable year 1944 was \$75,615.24 which was not reported in your return. Your community half of this income is \$37,807.62.

(b) The net loss from commissions reported in the amount of \$2,881.18 and included in your return in the amount of \$1,440.59 is eliminated since this item is reflected in business income.

(c) and (d) The deductions claimed for contributions and taxes are disallowed due to lack of substantiation.

(e) The deduction claimed in the amount of \$870.00 as a casualty loss is decreased in the amount of \$435.00, representing the community half allowable as a deduction by your wife.

(f) The deduction claimed for medical expenses is disallowed since the total medical expenses do not exceed five per cent of your adjusted gross income as determined. Section 23 (x), I.R.C.

## COMPUTATION OF TAX

Taxable Year Ended December 31, 1944

Net income adjusted.....\$37,372.62

Less: Surtax exemption..... 500.00

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Surtax net income.....\$36,872.62

Surtax ..... \$ 17,627.20

Net income adjusted.....\$37,372.62

Less: Normal-tax exemption..... 500.00

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Net income subject to normal tax.....\$36,872.62

Normal tax at 3%.....	\$ 1,106.18
Correct income tax liability.....	\$ 18,733.38
Income tax liability shown on return, account No. 9020346 .....	None
Deficiency of income tax.....	\$ 18,733.38
50% penalty .....	\$ 9,366.69

[Endorsed]: T.C.U.S. Filed December 12, 1951.

[Title of Tax Court and Cause No. 37941.]

### ANSWER

The Commissioner of Internal Revenue, by his attorney, Mason B. Leming, Acting Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits, denies and alleges as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the deficiencies and penalties as determined by the Commissioner are in the amounts set forth in paragraph 3 of the petition, but denies that the full amounts are in controversy.

4. (a) to (l) inclusive. Denies the allegations of error contained in subparagraphs (a) to (l) inclusive, of paragraph 4 of the petition.

5. (a). Admits that during the taxable years the petitioner was engaged in the wholesale liquor business, buying liquor from rectifiers and distillers and selling it to customers on orders which he so-

licited from said customers. The liquor which petitioner purchased and sold was handled for him by South Pacific Wholesale Company, which accepted delivery of the liquor and filled the orders obtained by petitioner in return for a handling fee paid by him to said company. Denies the remaining allegations of subparagraph (a) of paragraph 5 of the petition.

(b) Admits that during the year 1943 petitioner sold liquor through the South Pacific Wholesale Company, but denies that the amounts of gross sales, cost of goods sold, gross profit and operating expenses, as alleged, are correct. Denies that petitioner incurred a net loss for the taxable year 1943.

(c) Denies the allegations contained in subparagraph (c) of paragraph 5 of the petition.

(d) Admits that during the taxable year 1944, petitioner sold liquor through the South Pacific Wholesale Company, but denies that the amount of gross sales, cost of goods sold, gross profit and general operating expenses, as alleged, are correct. Denies that petitioner incurred a loss for the taxable year 1944.

(e) to (i) inclusive. Denies the allegations contained in subparagraphs (e) to (i) inclusive, of paragraph 5 of the petition.

6, 7 and 8. Denies the allegations contained in paragraphs 6, 7 and 8 of the petition.

9. Admits the allegations contained in paragraph 9 of the petition.

10. Denies each and every allegation contained



in the petition not hereinbefore specifically admitted, qualified or denied.

For further answer to the petition herein, respondent alleges:

11. That the income tax returns filed by the petitioner for the taxable years 1943 and 1944 reported net income and taxes due in the following amounts:

1943: Reported Victory Tax Net Income, \$10,-204.62; Reported Income Tax Net Income, \$9,-798.81.

1944: Reported Income Tax Net Income, (\$4,-124.27) (Loss).

1943: Reported Victory and Income Taxes Due, \$2,372.23.

1944: Reported Income Taxes Due, None.

12. That during the years 1943 and 1944 petitioner was in the business of buying and selling liquor, receiving large amounts of net income from said business and he knowingly and fraudulently failed and refused to report, acknowledge or disclose the receipt of said additional amounts of income, taxes due thereon and all facts and information regarding the receipt of said additional amounts of income, which said additional amounts of income are set forth in the deficiency notice, a copy of which is attached to the petition, and made a part hereof by reference; which said amounts of additional income resulted in the following corrected, adjusted net income and tax liability:

1943: Correct Adjusted Victory Tax Net Income, \$80,748.92; Correct Adjusted Income Tax Net In-

come, \$80,546.02; Correct Income and Victory Tax Liability, \$52,120.14.

1944: Correct Adjusted Income Tax Net Income, \$37,372.62; Correct Income Tax Liability, \$18,-733.38.

13. That, accordingly, there are due, and there are hereby claimed from the petitioner for the years 1943 and 1944 the deficiencies and penalties as set forth in the notice of deficiency and below:

1943: Deficiency of Income and Victory Tax, \$49,747.91; 50% Penalty, \$24,873.96.

1944: Deficiency of Income Tax, \$18,733.38; 50% Penalty, \$9,366.69.

14. That the said income tax returns for 1943 and 1944 which were filed by the petitioner are false and fraudulent and were prepared and filed with intent to evade tax, and, therefore, the said deficiencies for the years 1943 and 1944 are due to fraud with intent to evade the true and correct taxes due from the petitioner for said taxable years.

Wherefore, respondent prays that the Court determine the deficiencies and penalties involved herein to be the amounts determined by the Commissioner.

/s/ MASON B. LEMING,

Acting Chief Counsel, Bureau of  
Internal Revenue

Of Counsel:

B. H. Neblett, District Counsel

R. E. Maiden, Jr., W. P. Flynn, Jr., Special  
Attorneys, Bureau of Internal Revenue

[Endorsed]: T.C.U.S. Filed February 8, 1952.

[Title of Tax Court and Cause No. 37941.]

### REPLY

The petitioner by his counsel, Sidney R. Reed, Charles J. Munz, Jr. and Edward D. French, for reply to the allegations affirmatively set out by the respondent in his answer, admits and denies as follows:

11. Admits the allegations contained in paragraph 11. of the answer.

12. Admits that during the years 1943 and 1944 petitioner was in the business of buying and selling liquor. Denies the remaining allegations contained in paragraph 12. of the answer.

13. Denies the allegations contained in paragraph 13. of the answer.

14. Denies the allegations contained in paragraph 14. of the answer.

15. Denies each and every allegation contained in the answer not hereinbefore specifically admitted, qualified or denied.

Wherefore, petitioner prays that the deficiencies and penalties requested by the respondent in his answer be denied.

/s/ SIDNEY R. REED,  
/s/ CHARLES J. MUNZ, Jr.,  
/s/ EDWARD D. FRENCH,  
Counsel for Petitioner

[Endorsed]: T.C.U.S. Filed March 20, 1952.



[Title of Tax Court and Causes No. 37940-41.]

## MOTION TO VACATE DECISION AND FOR RECONSIDERATION BY THE FULL COURT

Now come the Petitioners by their counsel, Sidney R. Reed, and respectfully move that the Court vacate the Court's decision dated June 30, 1954, in the above titled matter and the Full Court reconsider the evidence and record.

In support of said motion, Petitioners accompany this motion with written argument showing the determination to be arbitrary, excessive on the facts and to be founded on inference alone.

Dated at Los Angeles, California, July 23, 1954.

Respectfully submitted,

/s/ SIDNEY R. REED,

Counsel for Petitioners

[Endorsed]: T.C.U.S. Denied August 2, 1954.

Signed John W. Kern, Chief Judge.

[Endorsed]: T.C.U.S. Filed July 27, 1954.

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[Title of Tax Court and Causes No. 37940-41.]

## MEMORANDUM FINDINGS OF FACT AND OPINION

Petitioner was engaged in the wholesale liquor business in 1943 and 1944. He made sales of liquor at prices in excess of the O.P.A. ceiling. He did not keep any books or records which adequately reflected his receipts and expenditures. His true net

income from business in each year was understated in his tax returns in substantial amounts. Held, upon the facts: (1) Respondent was justified in reconstructing petitioner's net income by use of an acceptable method. (2) The amounts of certain business expense deductions incurred and paid by petitioner determined. (3) Part of the deficiency in petitioner's income tax in each year is due to fraud with intent to evade tax.

Mr. Sidney R. Reed, for the petitioners.

Clayton J. Burrell, Esq., for the respondent.

Harron, Judge: The Commissioner determined deficiencies in the petitioners' income tax for 1943 and 1944, and additions thereto for fraud under section 293(b), I.R.C. as follows:

5		50% addition under	
Docket No.	Year	Deficiency	Sec. 293(b), I.R.C.
37940 Ruth Sterns	1943	\$51,923.66	\$25,961.83
	1944	18,970.12	9,485.06
37941 Cy Sterns	1943	49,747.91	24,873.96
	1944	18,733.38	9,366.69

The respondent concedes that the questions presented relate to the petitioner, Cy Sterns, only. The petitioner, Ruth Sterns, is involved only because the petitioners report income on the basis of the community property laws of California.

In the taxable years, Cy Sterns sold liquor and his operations constituted his business. The respondent has determined that the income earned by Cy Sterns was understated in the returns to the extent of \$160,492.21, for 1942, and \$75,615.24, for 1943.

The issues, in general, are:

(1) Whether the Commissioner determined the correct amount of the petitioner's net income from business.

(2) Whether the Commissioner erred in disallowing, in whole or in part, certain nonbusiness deductions claimed by petitioners.

(3) Whether part of the deficiencies in Docket No. 37941, Cy Sterns, is due to fraud with intent to evade tax.

### Findings of Fact

The facts which have been stipulated, are found as facts, and the stipulation is incorporated herein by this reference.

Petitioners, husband and wife, are residents of Los Angeles, California. Each filed individual income tax returns for the years 1943 and 1944 with the collector for the sixth district of California. The returns were filed on a cash-calendar year basis. Since the issues presented relate to the business conducted by Cy Sterns, he is referred to hereinafter as the petitioner.

In 1943, petitioner, through contacts with various distillers, was able to secure the delivery of quantities of liquor, which was then in short supply. He also had customers for the liquor. He did not have the license or facilities for conducting a wholesale liquor business. In order to facilitate his sales of liquor, he entered into an agreement on October 1, 1943, with the South Pacific Wholesale Company, referred to hereinafter as South Pacific, a wholesale liquor dealer located in Los Angeles. The agreement provided, inter alia, that petitioner was

to secure the delivery of liquor from distillers to South Pacific. South Pacific was to pay the invoice price, taxes, and handling charges on each shipment, make deliveries of the liquor to the petitioner's customers, and, after deducting its fee, was to account to the petitioner for all profits realized. For its services, South Pacific was to receive a fee of \$2 a case.

During 1943 and 1944, South Pacific handled 13,344 cases of liquor for the petitioner pursuant to the agreement. In some instances petitioner's customers paid South Pacific for the liquor, in other instances they paid the petitioner directly. Payments were made both by check and in cash.

During 1943 and 1944, the petitioner sold liquor at prices in excess of the maximum ceiling prices established by the O. P. A. In October 1946, petitioner was convicted in the United States District Court for the Northern District of California of violating the Emergency Price Control Act of 1942, as amended. The offense for which he was convicted occurred in 1944.

The petitioner did not keep any books or records of either his business or personal receipts and expenditures. The only record allegedly kept by the petitioner consisted of a loose leaf book which purported to show his sales of liquor at O. P. A. prices, and the amounts of his refunds to customers during 1943 and 1944. The books and records of South Pacific did not reflect the amounts paid by the petitioner's customers either to South Pacific or to the petitioner.



The petitioner's net income or loss from business for 1943 and 1944 as reported in his tax returns, and as determined by the respondent are as follows:

Year	Reported in return	Determined by respondent
1943 .....	\$10,204.61	\$160,492.21
1944 .....	(2,881.18)	75,615.24

In 1943 and 1944, the petitioner deposited in various banks in Los Angeles business receipts totaling \$211,214.68, and \$76,088.91, respectively. A part of the petitioner's business receipts for each year were not deposited in any bank.

The respondent reconstituted petitioner's net income from business as follows: He included as gross income for each year the total of bank deposits plus undeposited checks and cash, after making allowance for such identifiable nonincome items as loans, redeposits, and transfers from one bank account to another. He allowed deductions in each year from the gross income thus determined for substantiated business expenses.

The respondent was justified in reconstructing petitioner's net income from business by use of an acceptable method.

The following items included by the respondent in petitioner's gross income from business for 1943 did not constitute income to the petitioner:

Item	Amount
Checks from South Pacific payable to H. P.	
Hanthorn .....	\$ 2,908.74
Mike O'Hara .....	2,000.00
Funds used by petitioner to purchase a tele- graphic money order.....	25,000.00
Total.....	<hr/> \$29,908.74



The petitioner is entitled to business expense deductions for 1943, in addition to the amounts allowed by the respondent, for refunds to customers, for cost of merchandise, and for miscellaneous expense as follows:

Item	Amount allowed by respondent	Amount paid by petitioner	Additional deduction
Refunds to customers	\$ 29,564.70	\$ 41,620.35	\$12,055.65
Cost of merchandise	97,637.91	129,360.34	31,722.43
Misc. expense	.....	2,681.74	2,681.74
Totals	\$127,202.61	\$173,662.43	\$46,459.82

The petitioner made refunds in cash in the amount of \$10,465.35, and by check in the amount of \$31,155., or a total of \$41,620.35.

In 1943 the petitioner's net income from business was not less than \$91,749.30.

The following items included by the respondent in petitioner's gross income from business for 1944 did not constitute income to the petitioner:

Item	Amount
Loans to petitioner.....	\$10,450
Bank deposit in n/o Mrs. H. P. Hanthorn.....	2,538
	<hr/> \$12,988

The petitioner is entitled to business expense deductions for 1944, in addition to the amounts allowed by the respondent, for refunds to customers, for cost of merchandise, and for miscellaneous expense as follows:

Item	Amount allowed by respondent	Amount paid by petitioner	Additional deduction
Refunds to customers	\$ 10,140.00	\$ 13,638.35	\$ 3,498.35
Cost of merchandise	45,695.65	55,218.35	9,522.70
Misc. expense	.....	7,204.69	7,204.69
Totals	\$ 55,835.65	\$ 76,061.39	\$20,225.74

The petitioner made refunds in cash in the amount of \$3,900, and by check in the amount of \$9,738.35.

In 1944 the petitioner's net income from business was not less than \$46,301.50.

Petitioners paid medical expenses in 1944 in the amount of \$1,575.08.

The petitioners are not entitled to any nonbusiness expense deductions for taxes or charitable contributions in 1944.

Part of the deficiency in Docket No. 37941, Cy Sterns, for each of the years 1943 and 1944 is due to fraud with intent to evade tax.

No part of the deficiency in Docket No. 37940, Ruth Sterns, for each of the years 1943 and 1944 is due to fraud with intent to evade tax.

### Opinion

The petitioner did not keep any regular books of account reflecting either his business or personal receipts and expenditures. Nor did the records which were kept by South Pacific show the amounts paid in 1943 and 1944 by petitioner's customers either to South Pacific or directly to the petitioner. The petitioner admits that he made several sales of liquor during 1943 and 1944 at prices in excess of the O. P. A. ceiling and the evidence adduced by respondent establishes that he made other sales at prices in excess of the O. P. A. maximum. He was convicted in 1946 of violating the Emergency Price Control Act of 1942; the violation occurred in 1944. Large sums of money were unquestionably received by petitioner in connection with the operation of his

business in 1943 and 1944. These sums were not reflected in any books or records and they were greatly disproportionate to the income reported by petitioner in his tax returns. Under the circumstances, the respondent was justified in reconstructing the petitioner's income by use of an acceptable method. See *Louis Halle*, 7 T.C. 247, affd. 175 F.2d 500, certiorari denied 338 U.S. 949; *Max Cohen*, 9 T.C. 1156, affd. 176 F.2d 394; *Arlette Coat Co., Inc.*, 14 T.C. 751.

The petitioner has the burden of establishing substantial error in the respondent's reconstruction of income. This he has not done. We are not impressed with the petitioner's testimony. With a few exceptions, he has failed to come forward with any convincing evidence that the substantial sums which were admittedly received by him in 1943 and 1944 constituted anything other than taxable income to him. Petitioner did establish by creditable evidence that a few items included as income by the respondent in each of the years 1943 and 1944 were nonincome items. Also, that he is entitled in each year to larger deductions for cost of goods sold, for refunds to customers, and for miscellaneous business expenses than were allowed by respondent. Petitioner is entitled to deductions for the above items in amounts as set forth in the Findings of Fact. In all other respects, the respondent's determination of the deficiencies is sustained for failure of proof.

The respondent has the burden of proving fraud by clear and convincing evidence. He has met that burden. We are satisfied from all of the evidence

and the record that part of the deficiency in the petitioner's income tax for each of the years 1943 and 1944 is due to fraud with intent to evade tax.

Respondent concedes that the fraud penalty should not be imposed in Docket No. 37940, petitioner, Ruth Sterns.

Decisions will be entered under Rule 50.

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The Tax Court of the United States  
Washington

Docket No. 37940

RUTH STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determinations of the Court in its Memorandum Findings of Fact and Opinion filed on June 30, 1954, the petitioner filed recomputations under Rule 50 with which the respondent agrees. Accordingly, it is

Ordered and Decided: That there are deficiencies in income tax for the years 1943 and 1944 in the amounts of \$21,947.43, and \$8,222.20, respectively; and that no deficiencies in penalty under section 293(b) of the 1939 Code are due from this petitioner.

[Seal]            /s/ MARION J. HARRON, Judge

Entered and Served October 26, 1954.



The Tax Court of the United States  
Washington

Docket No. 37941

CY STERNS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the determinations of the Court in its Memorandum Findings of Fact and Opinion filed on June 30, 1954, the petitioner filed recomputations under Rule 50 with which the respondent agrees. Accordingly, it is

Ordered and Decided: That there are deficiencies in income tax and penalty under section 293(b) of the 1939 Code as follows:

Year	Deficiency	Sec. 293(b)
1943 . . . . .	\$19,771.68	\$9,885.84
1944 . . . . .	8,016.79	4,008.40

[Seal]        /s/ MARION J. HARRON,  
                 Judge

Entered: October 26, 1954.

Served: October 26, 1954.



[Title of Tax Court and Cause No. 37940.]

## PETITION FOR REVIEW

Taxpayer, the petitioner in this cause, by Orville W. McCarroll, counsel, hereby files her petition for review by the United States Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States rendered on the 26th day of October, 1954 determining the deficiencies in petitioner's Federal Income Tax for the calendar years 1943 and 1944 in the respective amounts of \$21,-947.43 and \$8,222.20, and respectfully shows as follows, to wit:

### I.

That petitioner is domiciled in and is a resident of the County of Los Angeles, State of California, and filed her individual income tax returns for the years 1943 and 1944, respectively, with the Collector of Internal Revenue for the Sixth Collection District of the State of California at Los Angeles, California; that this Petition for Review is filed pursuant to the provisions of Section 7482(a) and 7482(b)(1) of the Internal Revenue Code of 1954.

### II.

#### Nature of the Controversy

That the controversy involves the proper determination of the petitioner's liability for Federal Income Taxes for the calendar years 1943 and 1944.

During the years herein involved, petitioner's husband was engaged in the purchase and sale of liquor. As petitioner's husband did not possess a

United States Government permit authorizing him to carry on a business as a liquor wholesaler, petitioner's husband entered into an arrangement with South Pacific Wholesale Company, a licensed wholesale liquor dealer, in the City of Los Angeles, County of Los Angeles, State of California, wherein and whereby said South Pacific Wholesale Company accepted deliveries of said liquor from the producer thereof and made deliveries to customers of petitioner's husband according to the direction of petitioner's husband. That periodic reports were rendered by said South Pacific Wholesale Company to petitioner's husband reflecting the amounts of liquor received by said South Pacific Wholesale Company for and on behalf of petitioner's husband, and showing also the deliveries made therefrom. During said period petitioner's husband and said South Pacific Wholesale Company handled and sold great quantities of liquor. During said period petitioner took no active part in the business so conducted by her said husband and the income reflected by respondent in the deficiency notice represented petitioner's community half interest in the alleged income from the said business.

Petitioner's husband caused petitioner's income tax returns to be prepared by an independent public accountant from the settlement statements rendered by said South Pacific Wholesale Company and other books and records kept and maintained by petitioner's husband. Petitioner, not being versed in accounting or accounting methods or in the preparation of tax returns, accepted the said tax returns so

prepared as correct and signed and filed the same with the Collector of Internal Revenue for the Sixth Collection District of the State of California.

Respondent subsequently audited petitioner's tax returns and the tax returns of petitioner's husband for the years 1943 and 1944 and determined that the books and records of account maintained by petitioner's husband did not fully or adequately represent the true income of petitioner's husband or petitioner's community half interest therein. Respondent thereupon resolved to determine petitioner's net income by the "bank deposit method", which presumes that all amounts deposited in a bank account belonging to the taxpayer represent income. Upon the conclusion of said examination by respondent, respondent determined deficiencies in petitioner's income tax for the years 1943 and 1944 in the respective amounts of \$51,923.66 and \$18,970.12; and assessed penalties in the respective amounts of \$25,961.83 and \$9,485.06.

Upon the trial of the said matter in the Tax Court, respondent concluded that the penalties were not applicable and offered no evidence in regard thereto; whereupon the Tax Court determined that no penalty was due from petitioner herein. Upon the trial of the said matter, however, the Tax Court determined an ultimate deficiency against petitioner herein in the sum of \$21,947.43 for the year 1943 and \$8,222.20 for the year 1944.

### III.

That said taxpayer, being aggrieved by the find-

ings of fact and conclusions of law contained in said findings and opinion of the Court, and by its decision entered pursuant thereto, desires to petition for a review thereof by the United States Court of Appeals for the Ninth Circuit; that petitioner respectfully requests and petitions that the review of said decision herein be consolidated with and heard with the review in regard to Tax Court Docket No. 37941.

/s/ ORVILLE W. McCARROLL,

Counsel for Petitioner

/s/ RUTH STERNS,

Petitioner

[Endorsed]: T.C.U.S. Filed January 31, 1955.

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[Title of Tax Court and Cause No. 37941.]

### PETITION FOR REVIEW

Taxpayer, the petitioner in this cause, by Orville W. McCarroll, counsel, hereby and herewith files his petition for review by the United States Court of Appeals for the Ninth Circuit of the decision heretofore rendered by The Tax Court of the United States rendered on the 26th day of October, 1954, determining deficiencies in petitioner's Federal Income Taxes for the calendar years 1943 and 1944 in the respective amounts of \$19,771.68 and \$8,016.79, and penalties under Section 293(b) of the Internal Revenue Code of 1939 in the respective amounts of \$9,885.84 and \$4,008.40, and respectfully shows as follows, to wit:



## I.

That petitioner is domiciled in and a resident of the County of Los Angeles, State of California, and filed his individual income tax returns for the years 1943 and 1944, respectively, with the then Collector of Internal Revenue for the Sixth Collection District, State of California, at Los Angeles, California.

That this Petition for Review is filed pursuant to the provisions of Section 7482(a) and 7482(b)(1) of the Internal Revenue Code of 1954.

## II.

## Nature of the Controversy

The controversy involves the proper determination of petitioner's liability for Federal Income Taxes for the calendar years 1943 and 1944.

During the years in question petitioner was engaged in the business of selling liquor to cafes and cocktail bars. During the period involved petitioner had access to great amounts of liquor, but having no United States Government permit to carry on a business as a liquor wholesaler he entered into an arrangement with South Pacific Wholesale Company, a licensed wholesale liquor dealer, situate in the City of Los Angeles, County of Los Angeles, State of California, to accept delivery of said liquor. Petitioner would then sell the said liquor and would direct said South Pacific Wholesale Company to make deliveries to the persons purchasing the same. South Pacific Wholesale Company



kept detailed records of all liquor purchased for the account of petitioner and thereafter delivered pursuant to petitioner's directions. During the period here involved petitioner and said South Pacific Wholesale Company handled and sold great quantities of liquor.

Petitioner's income tax returns for the years in question were prepared by an independent public accountant from settlement statements issued by said South Pacific Wholesale Company settling the account between petitioner and said wholesale company. Said settlement statements reflected the amounts of liquor purchased for the account of petitioner, giving the quantity and the price thereof. Said statements further indicated the amount of liquor thereafter delivered for petitioner's account. Said independent public accountant also had access to other books and records of account kept and maintained by petitioner in regard to said business. Petitioner, having very little formal education, and not being versed in business record keeping or the preparation of income tax returns, accepted the said return prepared for him by said independent public accountant and filed the same as correctly reflecting his income for the period involved.

Respondent herein subsequently audited petitioner's income tax returns for the period herein involved and determined an initial deficiency for the year 1943 of \$49,747.91 with a penalty for said year in the amount of \$24,873.96, and an initial deficiency of income tax for the year 1944 of \$18,-

733.38 and a penalty of \$9,366.69. Respondent based said deficiency upon the fact that the books and records maintained by petitioner did not correctly or adequately represent petitioner's net income for the period involved. Respondent thereupon determined petitioner's income for the years 1943 and 1944 by arbitrarily determining that all amounts deposited in petitioner's bank account represented taxable income. Respondent terms this method of income determination as the "bank receipts" method of income determination.

Hearing was had before the Tax Court of the United States, in which this action and Docket No. 37940 involving petitioner's wife, Ruth Sterns, in a similar action were consolidated for hearing. As a result of said hearing had before said Tax Court, a determination was made that the correct deficiency for the year 1943 amounted to \$19,771.68 and for the year 1944 that the correct deficiency was \$8,-016.79, and that penalties for the years were respectively \$9,885.84 and \$4,008.40.

### III.

That said taxpayer, being aggrieved by the findings of fact and the conclusions of law contained in the said findings and opinion of the said Tax Court, and by its decision entered pursuant thereto, desires to petition a review thereof by the United States Court of Appeals for the Ninth Circuit.

That taxpayer further respectfully requests and petitions that the review of the matter of Ruth Sterns vs. Commissioner of Internal Revenue in

Docket No. 37940 be consolidated herewith and be heard simultaneously herewith.

/s/ ORVILLE W. McCARROLL,  
Counsel for Petitioner

/s/ CY STERNS,  
Petitioner

[Endorsed]: T.C.U.S. January 31, 1955.

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[Title of Tax Court and Causes No. 37940-41.]

### CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 26, inclusive, constitute and are all of the original papers and proceedings on file in my office as called for by the "Designation of Contents of Record on Review," (excepting Joint exhibits 1-A through 5-E, Petitioners' exhibits 6 through 17, (18 and 19 M.F.I. and not left with the record) and 20 through 27, Respondent's exhibits F through I, (J, K, L and M, withdrawn) and N through W), which are separately certified and forwarded herewith), as the original and complete record in the proceedings before The Tax Court of the United States entitled: "Ruth Sterns, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 37940" and "Cy Sterns, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 37941" and in which the Petitioners in The Tax Court proceedings have in-

initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 17th day of March, 1955.

[Seal]      /s/ VICTOR S. MERSCH,  
Clerk, The Tax Court of the  
United States

The Tax Court of the United States

Docket Nos. 37940 and 37941

CY STERNS and RUTH STERNS,  
Petitioners,  
vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## TRANSCRIPT OF PROCEEDINGS

Court Room No. 9, United States Post Office and Court House Building, Los Angeles, California, October 21, 1953—9:30 a.m.

(Met pursuant to notice.)

Before: Honorable Marion J. Harron, Judge.

Appearances: Sidney R. Reed, 608 So. Hill St., Los Angeles, Calif., appearing for the Petitioners.  
Clayton J. Burrell, (Honorable Charles W. Davis,



Chief Counsel, Bureau of Internal Revenue), appearing for the Respondent. [1\*]

The Clerk: Docket Nos. 37940 and 37941, Ruth Sterns and Cy Sterns.

Please state your appearances for the record.

Mr. Reed: Sidney R. Reed, for the parties in both cases.

Mr. Burrell: Clayton J. Burrell, for the Respondent.

The Court: May I say, before we start, that the Court had to take care of a matter relating to our San Francisco calendar and we have been delayed a few minutes this morning. I can make up the time, however, because we have all of today and all of tomorrow to hear this case, and we need not feel hurried about the matter at all.

Thank you for waiting on the Court this morning.

Mr. Reed, I think you may want to make an opening statement, or if Mr. Burrell wants to make the opening statement first, because you have a stipulation of facts—you may proceed with either way, whichever is the better.

Mr. Burrell: Whichever you desire.

Mr. Reed: I would just as soon make the opening statement. Does your Honor prefer to have me stand?

The Court: It is customary in our court, as in the United States District Court, for counsel to stand. During the trial of the case you may find

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\* Page numbers appearing at top of page of original Reporter's Transcript of Record.



that you want to sit down to rest a little. That is all right. I don't insist [3] that counsel stand during the trial of the case, but I might suggest to you that it depends a little bit on the practical side of it. Sometimes the reporter hears you better and the witness hears you better if you stand and are near the witness box.

But on the whole please proceed in the way that will be most comfortable to you.

Mr. Reed: Thank you.

Opening Statement on Behalf of the Petitioners  
By Mr. Reed

Mr. Reed: In this case, your Honor, the Petitioners are husband and wife. I believe it is the intention of Mr. Burrell to agree to consolidate the two cases.

The Court: Will you just make a motion to consolidate, yourself?

Mr. Reed: I move the Court to consolidate these two cases for hearing.

The Court: The motion is granted. These proceedings are consolidated.

Mr. Reed: The Petitioner Sterns conducted a wholesale liquor business. He had no federal basic permit. He did, however, have a state license. Because of the lack of this federal permit, he made an arrangement with the South Pacific Wholesale Company, who did have a permit, to sell through that firm. The business was entered into in 1943 [4] and terminated in 1944.

For a few months during that period there was

a shortage of liquor which caused that business to be very active and put the liquor people in somewhat of a frenzy to obtain liquor. That resulted in the Petitioner receiving large sums of money, something he had been unaccustomed to before during his lifetime.

The Petitioner left school at the age of nine. He had no formal education; never had any experience in keeping records, and therefore he did what would be natural, he took in large sums of money and kept track of it on slips of paper.

Nevertheless, he deposited some in the bank, carried large sums of money in his pocket. Many times he took large sums of money on deposit for whiskey that he couldn't deliver. Later he refunded those sums.

In his tax return he employed a professional accountant. The accountant resorted to the records of South Pacific Wholesale Company and other records that were furnished him by the Petitioner in preparing his return. The returns did not understate the net income. There were these large sums of money that were handled—they were not income. The Commissioner contends there was \$236,000.00 unreported income in the years '43 and '44, all received within a few months' time. He has adopted the bank deposit theory of determining that income. \$236,000.00 is such a large sum, I am sure the [5] evidence will disclose the Commissioner's theory is so improbable that it is not credible.

On the contrary, the Petitioner will show a loss of substantial amount. At the time he terminated

the business in 1944, he had not only lost what he went into the business with in 1943, but he was heavily in debt.

That is all.

Mr. Burrell: I will add a few words, your Honor, for clarification.

### Opening Statement on Behalf of the Respondent

By Mr. Burrell

Mr. Burrell: This case involves two years, 1943 and 1944, both of which years Commissioner has asserted deficiencies in both cases.

About the fraud penalty, at the outset the Respondent concedes error in asserting the fraud penalty on Petitioner Ruth Sterns. No proof will be adduced and it will be deemed to be conceded by the Commissioner.

It is true that upon investigation by the Government agents, and finding no books of account being kept by the Petitioner Cy Sterns, or at the very least inadequate books not properly reflecting his income, a reconstruction of his income was resorted to by the so-called bank deposits plus other unexplained receipts and adjustments thereto.

In this case, due to the fact that the Petitioner [6] ran a business, so to speak, of buying and selling liquor through his bank deposits, the agent who investigated the case gave due credit for an analysis of the account, cost of merchandise, transfers, loans, any other things that he could trace and discover as being offset, being against presumed income.

I should like to note to the Court that nine or

ten years have passed since the years involved in this case, the people with whom the Petitioner was dealing in whiskey, most of them owned and operated bars, taverns, et cetera. The Government has attempted to locate a great number of these people who were originally investigated and talked to by the agents. We have issued a number of subpoenas, many of which could not be served because the people could not be located.

The banks which carried the accounts of Mr. Sterns, and which accounts are the basis for our reconstruction of income have been subpoenaed, and at this moment we are holding them ready to appear with documents.

However, Mr. Reed and I have discussed this case over many, many times, and we have stipulated the total amount, the beginning figures of each of the two years involved. I do not believe, and I believe Mr. Reed agrees with me, that it should be necessary to bring in the bank officials with their original documents. And, if your Honor [7] please, we will attempt to try the case without actually calling them down to court.

In addition, one of the special agents from Special Intelligence working on this case is temporarily in charge of his office here in this city, and it is very difficult for him to come down. However, in the event we need him, he will come promptly on a telephone call. His name is Mr. Davis.

I believe that is all we have to offer.

The Court: Who will present the stipulation of facts?



Mr. Burrell: I have it in my possession and will be glad to present it, if you wish.

The Court: The stipulation of facts is received and made a part of the record.

Is there anything further of a preliminary nature? Do you want to introduce returns at this time?

Mr. Burrell: Mr. Reed may want to refer to them. It might be—I will introduce as a joint exhibit Respondent's Exhibit A and Petitioners' Exhibit 1——

The Court: 1-A.

Mr. Burrell: 1-A.

The Court: What year?

Mr. Burrell: That is the individual return of Ruth Stearns for the year 1943.

The Court: I will receive all of them after you have [8] identified them.

Mr. Burrell: The individual return of Ruth Sterns for the year 1944, as 2-B.

The individual return of Cy Sterns for the year 1943, as 3-C.

The individual return of Cy Sterns for the year 1944, as 4-D.

And the amended return of Cy Sterns for the year 1944, as 5-E.

(The documents above referred to were marked Joint Exhibits Nos. 1-A through 5-E for identification.)

Mr. Burrell: I would like to note for the record that attached to these returns are certain waivers,



consents to extension to the Statute of Limitations, duly executed by the Petitioners involved.

The Court: Exhibits Nos. 1-A, 2-B, 3-C, 4-D and 5-E are received in evidence.

(The documents heretofore marked Joint Exhibits Nos. 1-A through 5-E were received in evidence.)

Mr. Burrell: May I have the permission of the Court to withdraw these returns and substitute photostats?

The Court: You may do that.

Mr. Reed, I think we are ready to have you proceed now.

Mr. Reed: Mr. Sterns, please. [9]

The Court: Raise your right hand and be sworn. Whereupon,

### CYRUS STERNS

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Court: You may be seated. Will you please give your full name and address to the reporter? Give your present address.

The Witness: Cyrus Sterns, 126 Stonehaven Way, Los Angeles 49.

### Direct Examination

By Mr. Reed:

Q. Mr. Sterns, are you one of the Petitioners in this proceeding? A. Yes.

Q. Is Ruth Sterns your wife? A. Yes.

Q. What did your education consist of?

(Testimony of Cyrus Sterns.)

A. I left school when I was about—when I was about nine years old.

The Court: Let me see now. What was your answer?

The Witness: When I was about nine years old.

By Mr. Reed:

Q. How old are you now? [10]

A. Going on 66.

Q. Between the time you left school and 1943 did you have any other formal education that would help you to understand record-keeping and keeping of books? A. No.

Q. In 1942 did you become interested in the liquor business?

A. In 1942 I went to work for a wholesale liquor concern by the name of Von Runkel, I think it was.

Q. And in 1943, state the nature of your business.

A. I went to work for them with the theory that I wanted to learn the liquor business, and I applied for a wholesale liquor permit.

In the interim I became acquainted with the distributor, the distiller, and made a deal with him whereby he would furnish me with liquor. They had spent over \$300,000.00 in this area trying to sell their merchandise, and it was a low-grade whiskey, and of course they had no success. And when the shortage came along it was a good opportunity for them.

So not having a basic permit, I—the first deal

(Testimony of Cyrus Sterns.)

was on Baltimore Club, that I was supposed to get through a concern by the name of Harry Greski, G-r-e-s-k-i, I think is their name, and he advised me that they controlled about 80,000 cases. [11]

I went out then, and I knew some of the trade, and went around and told these people that I would be able to furnish them with whiskey.

The Court: How much?

The Witness: Well, whatever they wanted. I went out and they gave me deposits. This was in July, I think it was. They give me deposits and I in turn turned those deposits over to the Greski Company. They never delivered a bottle of whiskey until sometime in October.

In the interim these fellows, they call me at 1:00 o'clock, 2:00 o'clock, 3:00 o'clock in the morning demanding their whiskey. I had to go out then and buy retail from different stores, wherever I was able to get it. They didn't want their money back. They threatened to take me for a ride.

Mr. Reed: You made an arrangement, I believe with South Pacific——

The Court: Go ahead.

The Witness: Then October 1st they got a shipment of whiskey. That wasn't the whiskey that I sold, or represented as the whiskey that came in, and they then advised me or introduced me to the South Pacific Wholesale Company.

The Court: I am going to follow you very carefully. We are making a record and I am going to read it afterwards, and if I wait until later to ask

(Testimony of Cyrus Sterns.)

a few questions so that we don't have any loose ends, it will be too late. [12]

Greski Company, that is the company——

The Witness: Yes.

The Court: ——you say never delivered——

The Witness: Any whiskey over a period of three months or more. I think the first they delivered was in October, October 1st. They got a shipment, but it——

The Court: About when did you go to them in the first place?

The Witness: Must have been July.

The Court: And it wasn't until October, you say, that they began——

The Witness: They gave me approximately 900 cases.

The Court: Of what?

The Witness: Of Baltimore Club. Now, I paid them out of the bank deposits, withdrew from the bank. They wouldn't take anything but cash. And I withdrew most of that money from the bank, Bank of America on Santa Monica and—well, two blocks east. I don't remember the cross street. It was two blocks east of Robertson.

The Court: Now, Mr. Reed, just so that you will do this rather than the Court,——

The Witness: May I interrupt——

The Court: Will you go along slowly with Mr. Sterns and observe when he may go a little too fast and leave out the necessary details. Remember, it is always the who, when, [13] where and why.



(Testimony of Cyrus Sterns.)

Mr. Reed: Yes.

The Court: And Mr. Sterns, I sometimes have to say, we just have to go gradually and take up one point at a time, one thing after another, and don't try to hurry.

Now, Mr. Reed will watch you and suggest that you stop a minute and complete your thought.

Mr. Reed, I want to know, for example, as Mr. Sterns testifies, when he says he withdrew money from the Bank of America; he may want to finish that sentence. Please go back and say, "How much money was withdrawn? What was the charge for the 900 cases of Baltimore Club?" You keep in mind, please, what is involved in writing findings of fact.

And, Mr. Sterns, I guess you are going to be on the stand for quite a while. Take it easy. I am going to ask the Clerk to give you a glass of water. Just sit back and relax. It is really very fortunate in our court here that we have a small courtroom and there are not many people here, and you need not feel concerned at all about this. We want to do the fair and right thing, and we want to hear everything that you have got to offer. Sometimes it is very hard to get a witness to go slowly enough to give us the details.

By Mr. Reed:

Q. Mr. Sterns, how much did you withdraw from the bank, do you recall, that you transferred to Greski? [14]

A. Well, I think the total amount—I can't re-



(Testimony of Cyrus Sterns.)

member. Whenever I would order out—I think it was around \$22,000.00 or \$24,000.00, I think, for that 900 cases, that I was charged with the freight, and then paid them a dollar.

Q. Did that go to them direct, or through South Pacific——

A. No, the only charge then, South Pacific charged me \$2.00 a case for clearing it.

Q. Who was South Pacific?

A. Mr. Edward Syracuse and Mr. Perneti. I think he was a partner or an associate, or something.

The Court: About how much a case would he be paying for the whiskey; you better ask him that.

Q. (By Mr. Reed): How much was that whiskey a case?

A. I think it averaged—I don't remember. I have the records there. I think it was around \$20.00 or \$21.00 a case. Then you have got your state tax, which was \$1.92, and freight of a dollar, and that is the actual cost. Now, that doesn't include the dollar for clearing from the Greski Company, and \$2.00 clearing for South Pacific.

Mr. Reed: Your Honor, we have got approximately 12,000 cases that we are concerned with in the proceeding, and I think we have invoices regarding most of it, through the South Pacific Company, that we are going to take up at the moment.

I offer what purports to be an agreement between South Pacific Wholesale Company and the peti-

(Testimony of Cyrus Sterns.)

tioner Cy Sterns, as Petitioners' Exhibit next in order.

Mr. Burrell: I have seen it, your Honor, and I have no objection.

The Court: Received as Petitioners' Exhibit No. 6.

(The document above referred to was received in evidence and marked Petitioners' Exhibit No. 6.)

Q. (By Mr. Reed): Mr. Sterns, I hand you Petitioners' Exhibit No. 6, and I ask you if that is your signature. A. Yes, sir.

Q. Is this substantially the agreement or the entire agreement between you and South Pacific Wholesale Company?

A. Not on the entire agreement, but that one——

Mr. Reed: Would you Honor care to see this? It is a brief summary of their entire agreement.

The Court: Yes, sir. I suggest, Mr. Reed, that you have Mr. Sterns explain his arrangements. These things have to get into the record. Furthermore, the Court doesn't know anything about wholesale liquor transactions, how they are carried on. I mean, the whole arrangement of having a concern purchase liquor and then having somebody sell it for them is an unusual sort of transaction that ought to be explained and, again, step by step. [16]

Q. (By Mr. Reed): Mr. Sterns, please explain how you conduct your business. Explain how you sold it to your customers, the relationship with

(Testimony of Cyrus Sterns.)

South Pacific and the relationship with the distillers that sold through South Pacific.

The Court: Let me ask you one question there. Did you have only one transaction with Greski?

The Witness: No, that was over a period of time, and when——

The Court: What is the relationship of Greski to South Pacific Liquor Company? You see, you have got to show where these different people that you did your business with fit into the picture.

The Witness: I met the South Pacific people through the Greski people. It was my understanding that they, in themselves, when I started with wholesale liquor dealers here, and that when the merchandise—Harry Greski was a distiller or a wholesaler, I don't know which, back East somewhere, and I think Mr. Syracuse, I think he would be able to explain more of that. I don't know their background. They represented to me they could furnish me with this whiskey, and when the whiskey came in and they said, "Well, we couldn't have our state wholesale liquor business, but that I could get a firm who had just gotten their permit and state license and I'd make arrangements where they will take this over and bill it [17] so it will be within the law and the regulations, and so forth.

The Court: Is that the way Greski told you they would furnish some liquor?

The Witness: That is right.

The Court: And South Pacific Liquor Company was that agency?

(Testimony of Cyrus Sterns.)

The Witness: That is right.

The Court: And they agreed to handle liquor that Greski would bring in, or——

The Witness: That was the only transaction that I had with the Greski people. After I found that they was unable to keep their contract, and it was just a matter of life or death, and I was called and threatened and everything else.

The Court: Then you bought only 900 cases of Baltimore Club from Greski?

The Witness: Yes.

The Court: And you got that when?

The Witness: I think they delivered that—they started making their delivery, I think, October 1st.

The Court: Of what year?

The Witness: 1943.

The Court: 1943. And over what period of time did they make deliveries to you? [18]

The Witness: Oh, possibly took three or four days, I guess. My record would show when they finally delivered the last of that 900 cases.

The Court: Did you get any more liquor from Greski, other than the 900 cases of Baltimore Club?

The Witness: No, your Honor.

The Court: Then thereafter who did you deal with here?

The Witness: Then I had a car—I had anticipated getting my basic every day. Every day I was to have my basic.

The Court: What do you mean by that?

The Witness: Federal permit, the basic permit.



(Testimony of Cyrus Sterns.)

I was in touch and I had already had a consignment of Lansdowne out of Chicago.

The Court: Lansdowne what?

The Witness: Lansdowne whiskey. And when the South Pacific Company had handled the Baltimore Club, I asked them if they would handle this other shipment along the same lines, at \$2.00 a case; and they agreed to handle it. And from then on all other merchandise or whiskey I arranged then to ship through them, and the rest of it was the bulk of the business, which was nine or ten thousand cases, I guess, from the Old Monastery Company, who handled the balance of the merchandise which was shipped to us.

The Court: That is not entirely clear. The rest of the business—— [19]

The Witness: Approximately 9,000 or maybe 10,000 cases.

The Court: From Old Monastery—is that the name of a brand, or——

The Witness: The name of the distillery in Seattle.

The Court: That would be a different whiskey than what you call Lansdowne?

The Witness: Yes.

The Court: Lansdowne came from Chicago?

The Witness: From George Platt & Company out of Chicago.

The Court: About how much whiskey did you get from George Platt & Company, Lansdowne whiskey, from Chicago?



(Testimony of Cyrus Sterns.)

The Witness: I think, supposed to be a thousand cases.

Mr. Reed: If your Honor please, we have——

The Court: Let me just finish this, if you will, please. Yes?

The Witness: But we only got nine hundred and some cases, maybe 990, something like that. I can't remember that unless I look at my record.

The Court: And in what year did you get the Lansdowne?

The Witness: 1943. [20]

The Court: Then you say the rest of your liquor came from the Old Monastery Distillery?

The Witness: Yes.

The Court: You mean the rest that is involved?

The Witness: '43 and '44.

The Court: For '43 and '44?

The Witness: Well, may I change that?

The Court: Yes.

The Witness: I would have to add up the difference, because in July we bought some whiskey receipts——

The Court: July of what year?

The Witness: July of '44. And that was supposed to bottle a thousand cases, and that was called Kentucky Age. And that was shipped to Alfred Hart & Company here in Los Angeles.

The Court: Hart, H-a-r-t?

The Witness: H-a-r-t; one of the largest wholesale houses here.

(Testimony of Cyrus Sterns.)

The Court: And actually was shipped to them?

The Witness: The whiskey was, and they bottled it for us, for the South Pacific Company.

The Court: Then they delivered the bottled whiskey to South Pacific?

The Witness: That is, on their order to various—either South Pacific or customers that I had designated. [21]

The Court: Mr. Reed asked you a question, and then the Court interposed a few questions.

Now, what was that question, Mr. Reed?

Mr. Reed: If your Honor please, we have an expert accountant who has gone over the records of South Pacific, gone over the invoices, and Mr. Sterns' records, and I think he will be of great help to us in determining just how much whiskey was handled, where it went, and information as to the price received.

The Court: All right. Now, your question that you asked Mr. Sterns was about the South Pacific Company. Go back to that question. If you remember it.

Mr. Reed: What was that, please? I believe I recall the question.

Q. (By Mr. Reed): Mr. Sterns, in your arrangement with South Pacific were you required to assume expenses such as salesmen, your own office expense, travel expense, and so forth, the expenses of which did not go through their books?

A. My expenses did not reflect in their books at all.

(Testimony of Cyrus Sterns.)

Q. Did you employ salesmen during the years 1943 and 1944?

A. Yes, I did. I paid all the expenses.

Q. Did you maintain an office?

A. Telephone clerk. [22]

Q. Transportation? A. I paid for deliveries.

The Court: Now, you see, that's the thing. If you will, please follow through and complete a thought. The next question is, where did you maintain your office, who did you employ.

Q. (By Mr. Reed): Where did you maintain your office, Mr. Sterns?

A. I had an office on Santa Monica. I can't remember the address. On Santa Monica Boulevard, just a few doors east of Robertson. And then I moved from there on Beverly Drive, next door to the South Pacific Company. That was a little west of La Brea. And I don't remember the address.

Q. How many salesmen did you employ?

A. I had a fellow by the name of Charlie Mehan, Mike O'Hara. Oh, I must have had, I must have had four or five.

Q. Were these salesmen on salary or commission?

A. I give them a dollar a case, and that was it.

Mr. Reed: If your Honor please, I believe we have documentary evidence of considerable of those expenses. I am not sure that I am right, but can we not get into that through Mr. Radke, by having Mr. Radke testify, who is the accountant, have him testify as to them?

(Testimony of Cyrus Sterns.)

The Court: Yes, you can. [23]

Q. (By Mr. Reed): Mr. Sterns, these liquors that you sold, what quality were they?

A. Well, they were not comparable to national merchandise. A lot of it was 20 per cent whiskey, 75 per cent, 65 per cent fruit spirits. Some of them were alcohol spirits.

Q. Mr. Sterns, did you ever buy whiskeys for accommodation for your customers when you couldn't make deliveries?

A. Unfortunately, I went around and pleaded with some of these people to come in and tell the truth as to how many cases of liquor I brought from them, and they don't even remember me.

The Court: That doesn't answer the question.

The Witness: I bought from 300 to 350 cases of standard brands. By that I mean Harper's, Grandad, Hiram Walker, so as these people—during the time that we had no whiskey, because I had their money. They had paid me a deposit for whiskey, so to keep them going. I can give you the names of the people. I brought them. And the Government can check and find if they tell the truth, can find that I am telling the truth.

During the—when I had no whiskey I went out and I covered this entire town, went to drug stores, went to markets, went to package places, got a bottle here and got a bottle there and accumulated four or five cases and would [24] deliver to one customer one day and another day deliver a few cases some



(Testimony of Cyrus Sterns.)

place else, just to keep good faith until our own whiskey arrived.

The Court: What is the profit on a transaction of that kind?

The Witness: I didn't even get paid for the gas I consumed.

The Court: Take it over again, Mr. Reed.

Q. (By Mr. Reed): Was the transaction profitable and did you make money?

A. No, I did not; not a dime.

Q. Why did you do that?

The Court: Let's let him enlarge on that. He says he didn't make any profit. Now, this point goes to the heart of your case, Mr. Reed, and you better have your witness be very clear about that. Have him explain how he would handle the so-called accommodation transactions.

Q. (By Mr. Reed): Please tell the Court just how you carried out a transaction such as that, how the money was handled and how the liquor was delivered.

A. These were very, very hectic days. I'd have a line of people standing in front of my office with all kinds of money. "Here, take it. Hold it. When you get whiskey, [25] deliver it."

I would go out. Maybe I would have \$500.00 from one man and maybe I have a thousand dollars or maybe I have \$45,000.00, I would keep a record as to how much I deposited in the bank. Some gave me cash. Some gave me checks. I would deposit it in the bank until those checks cleared, and then I would



(Testimony of Cyrus Sterns.)

draw a thousand, five thousand, three thousand, and set out to buy. I couldn't very well—they paid me the retail price. I didn't get it through wholesale. I got it through individual retailers and paid them the retail price, and I in turn charged them. I was simply acting as an agent in that particular instance for these people. If a bottle of Hiram Walker was \$4.00 I paid \$4.00, and that was what they paid me; more of an accommodation to keep them quiet until our other merchandise—which we call pour whiskey, over the bar—would be available for them.

Q. Mr. Sterns, did these brands that you mentioned that you got from Old Monastery, Platt and so forth, did you ever sell those at over ceiling prices?

A. Personally, I don't believe that I sold ten or twelve accounts myself. Out of those ten or twelve accounts that I sold, I didn't take any over ceiling prices, with the exception—in San Francisco, I had a fellow up there who was in the bar business, and I shipped him a lot of merchandise, and when I found out that he was getting a terrific price, [26] and in fact, on those shipments I was about breaking even, because two salesmen were involved. So I wound up getting out of those transactions, in this particular case \$2.00 a case, which I took——

Q. On how many cases?

A. Well, there again, possibly eight or nine hundred cases.

Q. About eighteen hundred or two thousand dollars.

A. Yes.

(Testimony of Cyrus Sterns.)

Q. What did you do with that money?

A. Well, I commingled it with other funds. It was always pay this one, pay that one.

Then I had another case up there——

The Court: Just let me interrupt you here a minute. What is the significance of \$2.00 a case?

The Witness: Over ceiling.

The Court: What was the ceiling?

The Witness: Well, on some it was forty some odd dollars, some twenty-six, some twenty-nine. I had no way of knowing what the salesmen had charged, whether they charged \$100.00 or sold it for \$20.00.

The Court: That, I am sorry to say, isn't clear to me. That is why I say we have to sometimes go slowly.

There would be a ceiling price on a case of whiskey, right? [27]

The Witness: Right.

The Court: Would that vary according to the brand of whiskey?

The Witness: Oh, yes, definitely.

The Court: And the ceiling prices would vary from what amount to what amount?

The Witness: Well, ceiling prices would vary from \$29.00 to \$95.00.

The Court: A case?

The Witness: Yes, ma'am, or your Honor.

The Court: Now, you say you don't know what salesmen sold whiskey for. What is the point in mentioning that?

(Testimony of Cyrus Sterns.)

The Witness: Well, I am accused of so much ceiling that I didn't report, and that is not true. I am admitting what I did do.

The Court: You were accused of selling liquor at prices, that is, per case, at prices above the ceiling price.

The Witness: That is right.

Mr. Reed: If your Honor please——

The Court: Now, you say you have mentioned that salesmen sold liquor for you.

The Witness: Your Honor, that is correct.

The Court: Now, please complete your testimony on that. You also stated that you didn't know what they sold it for. [28]

The Witness: That is true.

The Court: Go ahead and complete that.

The Witness: What else can I say?

Q. (By Mr. Reed): Mr. Sterns, how many customers did you have? You mentioned you personally sold about 12.

A. I would say about 12.

Q. How many customers did you have that you considered your customers?

A. About 450.

The Court: 450 customers?

Mr. Reed: Yes, your Honor.

Q. (By Mr. Reed): Mr. Sterns, what is the extent of the over ceiling receipts that you received during the years 1943 and '44; that you personally received?

A. Oh, I don't think I received over \$4,000.00 or \$5,000.00.

Q. And you did what with that money?

(Testimony of Cyrus Sterns.)

A. I just put it together with my other funds.

Q. I see. Mr. Sterns, were you given a suspended six months jail sentence and fined \$5,000.00 because of that over ceiling activity?

A. It was a misdemeanor.

Q. Mr. Sterns, how old are you? [29]

A. 66 years old.

Q. Prior to that offense or that conviction had you ever had a police record?

A. No, I have not.

Q. Have you ever had one since?

A. No, sir.

Q. What did you do with all the moneys you received in your business?

A. I reinvested it in the business. I started that business with about \$15,000.00.

Q. When?

A. In '43. At the end of '44, and then, from the statements that my auditor gave me, it showed I made \$26,000.00 in '43, and \$14,000.00 net, upon which I paid my income. That's '43. And when I woke up in '44 I found that I not only didn't make \$14,000.00, I lost everything I had, plus being in debt from moneys that I had borrowed.

Q. Mr. Sterns, I believe you testified as to the quality of the liquors that you sold. The bulk of this whiskey, was it a brand that commanded a premium?

A. Well, I will say that if I was buying it I wouldn't pay it.

Q. Did you have losses in conducting your business that were not disclosed in your return?



(Testimony of Cyrus Sterns.)

A. Well, in that—if I may go back for a moment, [30] in that case before Judge Roach I was under oath and I made a statement where I had paid \$40,000.00 to a Mr. Weiss, Lou Weiss, and I did that on the guarantee of a Mr. Ostrow, who shipped me the bulk of my merchandise, or my——

Q. Wait a minute. Who is Lou Weiss?

A. Connected with the Pioneer Atlas in Chicago, a very big concern. And Mr. Ostrow said, “I’ll guarantee,” because in the final shipments he shipped, oh, I don’t know, three or four cars open account, which they usually don’t do, due to the fact he had that confidence in me. And at that time we owed them, or I did, for those cars, although they were assigned to the South Pacific Company. I couldn’t refuse to take his word that he said, “Don’t worry, Cy. You will get your merchandise.” Well, I never got a dime’s worth of the merchandise. I lost the \$40,000.00. In the interim, Ostrow died, and this man died.

Q. Did you have a loss in conjunction with a liquor transaction in Cuba?

A. You will have the receipts. The receipts show there I wired \$20,000.00 for the Bank of America at Wilshire and La Brea, and after they received the money they wired me back that I needed \$200,000.00, \$248,000.00 or \$240,000.00, to complete the deal within 48 or 72 hours or I would forfeit the deposit. I didn’t have that kind of money to wire, and consequently I lost \$20,000.00. [31]

Q. You lost \$20,000.00?                      A. Yes.



(Testimony of Cyrus Sterns.)

The Court: Do you have those telegrams?

The Witness: Yes, they are in my file.

Mr. Reed: We have some exhibits in that respect, your Honor.

The Court: I don't quite understand this transaction yet with Mr. Ostrow. I am sorry. I will have to ask you to go over that. These cases are, of course, difficult for the Court in the long run, and I must be sure that I get the details now as we go along. I don't want to interrupt you too much, but this transaction with Mr. Ostrow and Pioneer Atlas isn't clear.

Now, Mr. Sterns has testified in this one that when he was in Judge Roach's court he testified under oath that he paid \$40,000.00 to somebody, and Mr. Lou Weiss was involved, Pioneer Atlas and Mr. Ostrow. They were to ship three or four cars, I suppose, of whiskey.

The Witness: That would be about one car, about \$40,000.00.

The Court: Well, the witness said three or four cars on open account, South Pacific, and in the end he lost \$40,000.00.

Now, he did say he was going to ship three or four cars because I am taking this close to shorthand notes on [32] this testimony, as close to shorthand as I can. I want that cleared up, please.

Q. (By Mr. Reed): Mr. Sterns, who is Lou Weiss?

A. Well, I never met him until that day at the Towne House.

(Testimony of Cyrus Sterns.)

Q. Where was that Towne House, Los Angeles?

A. Los Angeles.

Q. All right. When was that?

A. Well, sometime in the latter part of January  
sometime—first part of January.

Q. What was the——

The Court: Don't you see, Mr. Reed? Latter part  
of January, when? 1862?

The Witness: 1944.

The Court: 1944. Now, please answer the ques-  
tion, who was Lou Weiss?

The Witness: I understand that he was either  
the president or general manager of the Pioneer  
Atlas Wholesale Liquor Company in Chicago.

The Court: Go ahead, Mr. Reed.

The Witness: And he was a friend of Mr. Os-  
trow's, Harold Ostrow.

The Court: Who is Harold Ostrow?

The Witness: Harold Ostrow was the owner of  
Old [33] Monastery Distilleries.

The Court: Where was that located?

The Witness: At Seattle.

The Court: Go ahead.

The Witness: Now, here's where the three or four  
cars come in. Mr. Ostrow had shipped South Pa-  
cific three or four cars. I know that one of the cars,  
the charges on one car was in excess of \$60,000.00,  
and the others were in smaller amounts, on open  
account.

The Court: That would be a shipment from  
Seattle?

(Testimony of Cyrus Sterns.)

The Witness: From Seattle.

The Court: Yes.

The Witness: So he introduced me to Mr. Weiss and told me that they had merchandise. There was no hesitancy on my part to give the man \$40,000.00.

The Court: You better explain that. Now, you apparently met Mr. Weiss and you discussed a deal with him, is that right?

The Witness: Between he and Mr. Ostrow.

The Court: What was the deal? Give us the details.

The Witness: The deal was to ship us 1,500 cases.

The Court: Who was to do the shipping, Atlas?

The Witness: Atlas. Mr. Weiss was the man that—I don't know through whom he was going to ship it, but he was going to ship me this merchandise.

The Court: Weiss was going to ship you how much?

The Witness: Whatever that amounted to, which was \$40,000.00 that I had given him. You know, there may have been a side draft against it for the difference, or he may have shipped it open account.

The Court: Weiss was going to ship as much as liquor as he could get for \$40,000.00?

The Witness: That is right. You never can tell how many cases, for example, in a car. It may be a big car. It may be a small car.

The Court: Then what happened?

The Witness: Nothing. I never got a bottle.

Q. (By Mr. Reed): What steps did you take then to recover your \$40,000.00?

(Testimony of Cyrus Sterns.)

A. No one else in the office knew anything about it. The man had died.

The Court: No one else in the office. Whose office?

The Witness: Mr. Weiss' office.

The Court: Where was his office?

The Witness: In Chicago.

Q. (By Mr. Reed): Did you pay him cash or check? A. Cash.

Q. Where did you get it? [35]

A. Out of the bank and certain deposits that I had with me.

The Court: The question Mr. Reed asked you is what efforts you made to recover your \$40,000.00. Did you get in touch with Pioneer Atlas? First, did you get in touch with them?

The Witness: I called them several times and asked for Weiss, and I was informed that he passed away. Nobody else knew anything about it.

The Court: Then your answer is that you did get in touch with Pioneer Atlas?

The Witness: I have called them several times.

The Court: That is an alleged loss of \$40,000.00 in 1944, as I understand it. And then the witness says that he had a loss of \$20,000.00 in an effort to get some liquor from Cuba.

Mr. Reed: Right.

The Court: But he hasn't said what year that was.

The Witness: That's '44, isn't it?

Mr. Reed: We have an exhibit on that, your Honor.



(Testimony of Cyrus Sterns.)

The Court: Even if you do have, Mr. Reed, I can't read a record intelligently by going from page 20 in the record over to page 108 to find out what is going to complete the testimony on page 20. That doesn't help me in reading the record. You have to visualize your presentation of evidence [36] as though you were dictating something to your secretary.

Now, if the witness is going to talk about a transaction, even though you intend to supplement it in some way you have got to go into the whole thing at one place. Please do that.

Q. (By Mr. Reed): Mr. Sterns, in this Cuba matter, what year did that take place?

A. Doesn't Mr. Radke have the receipt there? It was '44.

The Court: He can refresh his recollection if he wants to. If you have a receipt it has to be shown to Mr. Burrell. The accountant isn't on the stand.

Mr. Reed: Probably Mr. Burrell would stipulate to that.

Mr. Burrell: I may be able to if you give me one second.

Q. (By Mr. Reed): Mr. Sterns, I hand you here what purports to be telegrams and photostatic copies of telegrams. Have you seen that before?

A. Oh, yes.

Q. Does that refresh your memory as to when the transaction took place?

A. Well, this is the—you want me to answer that? [37]



(Testimony of Cyrus Sterns.)

Q. Yes.

A. Well, it would be February 3, 1944.

Q. And what is the amount shown there?

A. \$20,000.00. That is a receipt from the Bank of America. And then they wired me, "Receipt for your draft of \$20,000.00 received"——

Mr. Burrell: May I interrupt in response to his invitation of a stipulation?

The Court: I think it is too late now. You can hold it, at any rate.

Please have that marked for identification as your next exhibit. Hand those to the Clerk, please.

The Clerk: Exhibit 7 for identification; 8 and 9.

The Witness: Those are the duplicates.

The Court: Are they duplicates, Mr. Baird?

The Clerk: They appear to be, your Honor.

The Court: If you have something that is a photostatic copy, I suppose Petitioner only wants to offer the original and then substitute the photostat.

Let's start again now. The next number is 7?

The Clerk: Yes, your Honor.

The Court: 7 for identification. Anything else?

The Clerk: Just one exhibit; 7 for identification.

The Court: 7 for identification. [38]

(The document above referred to was marked

Petitioners' Exhibit No. 7 for identification.)

Mr. Reed: I offer Petitioners' Exhibit No. 7 for identification in evidence.

Mr. Burrell: No objection.

The Court: Are you willing to have the photostat substituted?

(Testimony of Cyrus Sterns.)

Mr. Burrell: Absolutely.

The Court: The photostat is received in evidence as Exhibit 7, and it is—what is it?

Mr. Reed: It is a photostat of a telegram to Cyrus Sterns, signed “Compania Explotadora de Inmuebles y Valores Sa.”

The Court: That relates to the \$20,000.00. Now, the testimony was that he sent \$20,000.00 by wire to the Bank of America. He said “they” wired back that he needed additional money, or something. He didn’t make clear who “they” are. And do I understand that Exhibit 7 shows who “they” are?

Mr. Reed: Yes, your Honor.

The Court: Who wired back?

Mr. Reed: Yes. And let the record show the corrected amount is \$20,020.00 and not \$20,000.00.

(The document heretofore marked Petitioners’ Exhibit No. 7 was received in evidence.)

Q. (By Mr. Reed): Mr. Sterns, did you have a transaction with one John Lewis in 1943 or ’44?

A. John Lewis was the former collector of San Francisco, and I had a salesman by the name of Sam Weiss, W-e-i-s-s, and he overheard the fact that I was trying to find somebody who could expedite getting of my basic permit. He came to me and said, “I can get you—I have an attorney up there”——

The Court: Who came to you?

The Witness: Mr. Weiss came to me and said, “I have an attorney in San Francisco who I think can expedite this basic permit for you.” In other

(Testimony of Cyrus Sterns.)

words, try to get it as soon as I could to stop paying the South Pacific \$2.00 a case, and he said his fee would be \$2,500.00. So I give him \$2,500.00. In fact, I got a thousand dollars—I don't know whether Mr. Syracuse remembers it or not—to draw against my account, and then give him \$1,500.00 at night when he came to my home.

The Court: In cash?

The Witness: In cash. So he said, "If at any time you want your money back," he says, "I'll get it back for you in 24 hours."

Well, one day I started to ask him about it, and I said I didn't believe that he could do anything for me because I understand all basic permits were stopped, and I [40] said, "Why don't you call this attorney?"

So he called him, and I went into my office, my own office, and cut in on his wire, and I heard Mr. Lewis tell him there wasn't any possibility, and I was satisfied that I was taken for \$2,500.00.

So he came to me later and insisted that he could make a deal with me with the General Distillers——

The Court: Who came to you?

The Witness: This Mr. Weiss. ——that he could make a deal for me in San Francisco with the General Distillers to supply 600 cases a week. And he came to one of the other boys and said he was in a very bad situation, issued a check for \$600.00 and unless he was able to make good that check that afternoon, that they would have a warrant for him. So he finally came to me, and I said, "Listen,"—now

(Testimony of Cyrus Sterns.)

I am talking to Mr. Weiss. I says, "I know that you didn't tell me the truth about this \$2,500.00, but if there is a possibility"—I figured that by making this deal in San Francisco, \$600.00 a week, even though he did lie to me, that I would probably be able to recoup this money that I advanced to him. And I was sick at the time. I had not only a heart condition but I had fibrinous thrombosis in my leg; I could hardly walk.

And I said, "Now, if you are in a jam, tell me the truth and I'll give you the \$600.00. But please don't make [41] me drive to San Francisco."

He says, "I am telling you the gospel truth, that I can set this deal up." He says, "You give me \$25,000.00 and I will go up there."

I said, "No, I won't give you \$25,000.00, but" I said, "Mrs. Sterns is in San Francisco. She is up there with her aunt."

This was about 11:00 in the morning and we figured we would leave about 3:00, and I didn't want to drive up there with \$25,000.00 at night. So I went to the Bank of America and wired her \$25,000.00; withdrew it from the bank. I had some cash, and the other I drew from the bank and wired her \$25,000.00.

I got up there that night about 12:00 or 1:00 in the morning. I had one of the salesmen that was driving me, a fellow by the name of Wally Mehan. And we went up there to see Mr. Clark. And, incidentally, his associate was a tax accountant who was handling the business for the General Dis-



(Testimony of Cyrus Sterns.)

tillers, and I told him, and he says, "Why, you must be crazy. We don't have such a deal."

There I was. So——

Q. (By Mr. Reed): What did you do then, if anything?

A. I drove back with that fellow that drove me up and refunded here and there, wherever I got the money from. [42] My wife stayed there another four or five days, I think, and I replaced the money from the people that I got it from.

Q. You borrowed——

A. Borrowed five here, three there; didn't make any difference how much money you wanted at that time, you could always call Jim Jones and whatever you wanted——

Q. Did they give it to you in cash?

A. Always in cash; most of the time in cash.

Q. Not in checks?

A. Checks were not good to me. I couldn't wire checks up there.

Q. What did Mrs. Sterns do with the money you wired her?

A. She give it back to me that morning. I got there at 1:00 in the morning, and then I picked up this money from her and went over to General Distilleries to make the deal, and there wasn't any deal.

Q. Mrs. Sterns you said had been visiting in San Francisco.

A. Yes.

Q. Wasn't there on business? A. Oh, no.

Q. What part did she take in this transaction?

A. Just got the money for me.



(Testimony of Cyrus Sterns.)

Q. Where? [43]

A. At the Bank of America.

Q. I see. A. Big surprise to her.

The Court: You mean when you wired the money?

The Witness: Yes.

The Court: You say she gave you back the \$25,000.00.

The Witness: Yes.

The Court: Then what did you do with the \$25,000.00?

The Witness: Brought it back to Los Angeles.

The Court: Did you originally draw that out of the bank when you wired \$25,000.00 to Mrs. Sterns?

The Witness: I drew some of it—I don't know just how much, but the bank wired the money.

The Court: Did you deposit it back in the bank?

The Witness: No. I may have some. It is a matter of ten years. I can't recall every time I borrowed money.

The Court: I don't understand your testimony when you say that you got one here, two there, three there and you returned it to people. That is too vague for me, and I don't know what you mean.

The Witness: Well, I could call up several people——

The Court: In relation to this \$25,000.00, if it has any relation to it—does that have any relation to the \$25,000.00, about calling up people?

The Witness: Yes. I could call up people when I needed any money. [44]

(Testimony of Cyrus Sterns.)

The Court: Mr. Reed, what is the point, please?

Mr. Reed: This \$25,000.00 that went to San Francisco, I believe the Government's theory is that that is unreported income.

The Court: What are you trying to bring out? See, I can't follow the witness, Mr. Reed. Can you follow him? If you can't follow him I can't follow him. Get him to clarify what he has to say. Go over that again, please.

Q. (By Mr. Reed): Mr. Sterns, in this transaction with John Lewis, I believe you testified that he represented that he could obtain liquor for you in San Francisco. A. Sam Weiss did.

The Court: That isn't his testimony.

The Witness: Sam Weiss.

Q. (By Mr. Reed): Please relate that again.

A. Sam Weiss told me that he could make a deal in San Francisco with General Distillers. I don't know who they were. I knew there was a General Distillers, but I didn't know any of them. He told me that he could make a deal with this distillery to supply 600 cases of whiskey a week and they would want a guarantee that we would take down so many cases, and wanted a guarantee of \$25,000.00. That was not a [45] deposit, just a guarantee—whatever the agreement was, that they would refund the \$25,000.00. In other words, that they were holding the whiskey for us and would not allow them then to sell it to somebody else, and if we don't take it out, and then the flood of whiskey would come

(Testimony of Cyrus Sterns.)

back, they would be stuck there with this whiskey. That is the point.

Q. Where did you get the \$25,000.00?

A. Well, as I usually did, if I had anything that looked like it was a good deal, I go to different—I went to Jack French; I don't remember the individual.

Q. Who did you borrow from on this particular deal?      A. I can't remember who.

The Court: The line of this questioning of yours is where did he get the \$25,000.00.

Mr. Reed: Yes.

The Court: Ask him that as a direct question.

Q. (By Mr. Reed): Where did you get the \$25,000.00?

A. Part of it I remember drawing out of the bank. The rest of it I must have gotten from some of my friends, who always were willing to help me. Now, I can't recall on that particular deal.

The Court: Did they give you cash?

The Witness: Always cash; most of the time it was cash. [46]

The Court: Did you deposit the cash they gave you at this time with respect to this \$25,000.00?

The Witness: No, because I had to wire that. I gave the cashier at the bank, plus whatever I had—I may have given \$15,000.00 or \$20,000.00, and withdrew five from the bank account. After ten years I can't say definitely just how that applied.

The Court: Did you put what you collected from

(Testimony of Cyrus Sterns.)

various people in your bank account to make up the \$25,000.00, or did you give cash to the cashier?

The Witness: Gave cash to the cashier, and if I was short, for instance,—as I say, I can't remember whether it was \$20,000.00 I gave them, or \$18,000.00—whatever I gave them.

The Court: The next question is what happened when there was no liquor and Mrs. Sterns gave him back the \$25,000.00? What did you do?

Q. (By Mr. Reed): What did you do after you got this \$25,000.00 from Mrs. Sterns in San Francisco?

A. Came back with it that same day.

Q. What did you do with it?

A. Returned it to various people that I borrowed it from or who loaned money to me.

Q. Did you return all of it? You say you drew some of [47] it out of your bank account.

A. Whatever I took for that particular deal; the rest of it went back in the bank.

Q. Did you make a redeposit in your bank account? A. Possibly.

Q. Do you know whether your records show that

A. I wouldn't remember that. I know that I had to make the refunds when I borrowed the money.

The Court: I think we will take a recess now for a few minutes for the reporter. You may step down.

(Short recess taken.)

The Court: Proceed, Mr. Reed.



(Testimony of Cyrus Sterns.)

Q. (By Mr. Reed): Mr. Sterns, on January 1, 1943, what was your net worth?

A. About \$15,000.00.

Q. What did it consist of?

A. I had about \$5,100.00 or \$5,200.00 worth of securities.

Q. What kind of securities?

A. Oh, General Motors, Diversified. I have a record of them if you want them.

Q. What was the balance?

A. About \$5,200.00. Then I had about, I don't know, maybe about \$8,000.00, maybe about \$13,500.00, around that in cash. [48]

Q. Do you mean then \$13,500.00 in cash?

A. No.

Q. That was your net worth?

A. That was my net worth, outside of—I always had a loan on my car. Outside of that, I don't remember.

Q. Did you have a loan on your car in 1943?

A. Yes.

Q. 1944? A. Yes.

Q. In 1944 what happened in your business?

A. Well, I went broke.

Q. Did you terminate your business?

A. Yes, I did.

Q. When you say you went broke, you mean—

A. Well, I even had been making refunds on moneys that were given to me in '44, '43 and '44, up until last year. In fact, I made another payment



(Testimony of Cyrus Sterns.)

just a few days ago for \$35.00, and I still owe them about \$180.00.

Q. Mr. Sterns, in 1943 and 1944 did you make any gifts of property or money or other assets?

A. I did not.

Q. No gifts whatever? A. No gifts.

Q. In 1943 or 1944 did you secrete any money or property? [49]

A. I did not.

Q. Mr. Sterns, did you and Mrs. Sterns own some jewelry on January 1, 1943? A. Yes, we did.

Q. What happened to that, if anything?

A. I sold it in order to pay some of these losses that I sustained.

Q. Where did you sell it?

A. I sold it to the Boulevard Jewelers on Hollywood Boulevard.

Q. When did you sell it, approximately?

A. I can't remember.

Q. In 1943 or 1944?

A. I think it was '44; could have been a little later. I don't know.

Q. But it wasn't before 1943, and wasn't after '44? A. No, wasn't before '43.

Q. What was the approximate amount you received for that jewelry? A. Almost \$3,000.00.

Q. What could you estimate your personal living expenses to have been in 1943 and 1944?

A. Oh, about \$500.00 a month, unless I would get some of my hospitalization or had to have doctors, and that would cost me considerably more. [50]

(Testimony of Cyrus Sterns.)

Q. Mr. Sterns, I ask you again, were all the moneys you received in your business in 1943 and 1944, aside from your living expenses, lost in the business? A. Lost, definitely.

Q. Mr. Sterns, did you employ a public accountant to prepare your returns?

A. I always had a public accountant prepare my returns.

Q. What material do you give him to prepare the returns from?

A. Well, all memorandums, different commission checks that I have received; all my expenses and so forth.

Q. At the end of 1944 did you owe persons money that you had borrowed and used for business purposes in 1943 and 1944? A. Yes, sir I did.

Q. Can you estimate the amount or do you know the exact amount?

A. No, I wouldn't know the exact amount.

Q. In 1944, Mr. Sterns, you claimed a deduction for contributions of \$100.00, but it wasn't itemized. Can you explain who that was given to?

A. Well, we gave to Community Chest. We gave to Red Cross. Oh, several different—I wouldn't remember just who it was.

Q. How do you know it was \$100.00? [51]

A. Well, I have no way—I know \$10.00 here and \$5.00 there. I approximated about \$100.00.

Q. You had a car in 1944? A. Yes, I did.

Q. And your return claimed a license expense of \$13.60. Did you pay that amount for auto license?

(Testimony of Cyrus Sterns.)

A. Well, whatever was on my income return. I wouldn't know what the actual amount would be without referring back to that.

Q. But you did have a car and it had a 1944 license?

A. Oh, yes. I have had a car since 1910, I guess.

Q. You claimed \$125.00 deduction in your 1944 return on account of sales tax. How did you arrive at that?

A. I imagine it costs us about \$4,000.00 a year.

The Court: Well, that is incomplete, you see. You imagined it cost you \$4,000.00 a year for what?

The Witness: For living expenses and purchases of clothing, or gas and——

The Court: How would \$125.00 sales tax be computed then?

The Witness: I can't answer that, your Honor, because I give the costs and what we had spent to the auditor, and that is the way he would compute them. I wouldn't know what we were allowed and what we weren't allowed.

The Court: You mean to say the accountant computed the [52] amount of \$125.00 sales tax?

The Witness: Whatever that income shows there, I imagine.

The Court: Did the accountant compute the amount of \$125.00, or did you? Is \$125.00 an estimate?

Mr. Reed: Mr. Sterns, is \$125.00 an estimate?

The Witness: I would imagine. I don't know. I wouldn't know about those things.

(Testimony of Cyrus Sterns.)

The Court: Did you keep receipts of sales tax, sales taxes paid?

The Witness: Well, I can't say that I did, but——

The Court: Then, I guess the \$125.00 is an estimate.

The Witness: Yes.

Mr. Reed: Yes, your Honor.

Q. (By Mr. Reed): In your return, Mr. Sterns, for 1944, you claim medical expense. That has been disallowed. A. Yes.

Mr. Reed: To save time, I ask the Court to advise me how I can expedite this, by getting these checks, all payable to the hospitals and doctors——

The Court: How many checks are there?

Mr. Reed: This group of checks here, your Honor.

The Court: You can have them all marked for identification as one exhibit, and afterwards you can offer [53] the checks in evidence. And the witness can refer to that exhibit number in his testimony. That would be 8 for identification.

(The document above referred to was marked Petitioners' Exhibit No. 8 for identification.)

The Court: Did I receive 7 in evidence, Mr. Clerk?

The Clerk: Yes, your Honor.

Mr. Burrell: May I note, your Honor, that the total amount as on the tab attached to these checks now identified is different from the amount reported



(Testimony of Cyrus Sterns.)

and claimed by the taxpayer in the report, in that it exceeds that amount by almost \$200.00.

I should also like to object to the introduction in evidence of any of those checks made payable and endorsed by individuals with no indication that they are to any doctor or hospital or any other medical expense.

The Court: How much was claimed in the return for 1944 for medical expense?

Mr. Burrell: The sum of \$1,575.00; to St. Vincent's Hospital the sum of \$781.83; to Dr. Maurice Graham the sum of \$893.25.

Mr. Reed: I believe the Petitioner will testify that the balance of the checks were payable to trained nurses.

To expedite this matter, I would be glad to stipulate the amount claimed in the return is correct. [54]

The Court: I don't think you can do that. You might say that you are not claiming any more than you claimed in the return. Is that what you mean to say?

Mr. Reed: Well, if your Honor please, I believe we are entitled to claim all of this as an expense, as a deduction.

The Court: You would have to amend your Petition to make claim for the additional deduction. If you are going to do that, then you would have to amend your Petition to conform to the proof. I didn't follow you on the figure, however. There are due \$1,575.00——

Mr. Burrell: Yes, that is the sum shown in the

(Testimony of Cyrus Sterns.)

schedule which the Petitioner attached to the return.

The Court: Then I must have gotten the figures broken down wrong; for St. Vincente's Hospital, how much?

Mr. Burrell: There is a discrepancy.

The Court: There is a discrepancy right in the return. \$781.83 hospital expense, and \$893.25 to Dr. Graham, totals \$1,675.08. And over in the margin the deduction claimed is \$1,575.00. And the discrepancy is unexplained in the return.

Now, I believe all of the deduction for medical expense was disallowed, was it, or——

Mr. Burrell: Yes, it was, your Honor. I am a bit confused. I will call to your Honor's attention, in this same [55] tax year, no tax upon himself, showing a loss, in which event he would not, according to this, which must exceed five per cent of the income shown on line 6, so he has not actually, or reported, in a sense, properly claimed any medical deduction for that year, and we have disallowed it in the 90-Day Letter.

Now, this additionally can be said: We have set up against this Petitioner an amount of income for this year which if it were found to be sustained, he would then have ample income on which the five per cent could apply and then could have those medical deductions which he can substantiate here.

The Court: Mr. Reed, you know that the statute provides the medical expense deduction is one which is allowed if the taxpayer has taxable income. Then there is a limit on the amount that can be taken.

(Testimony of Cyrus Sterns.)

Mr. Reed: Yes.

The Court: This seems to be a moot affair. If he had no income he wouldn't properly be claiming any medical expense.

Mr. Reed: But if your Honor should find there was a deficiency, he might well benefit by this deduction.

The Court: That is true. Well, how many of the checks which make up Exhibit 8 for identification are made payable to the hospital or to Dr. Graham? [56]

Mr. Burrell: Your Honor, we have made a segregation of the checks on the basis of all those checks payable to the hospital or Dr. Graham or any other doctor or optical company, as the case is here in a few of these, and Respondent is willing to stipulate that these are deductions for medical expense in the event the Court should find there is taxable income here to which the statute may apply.

The Court: Then I will ask the Clerk to mark the checks that make up the stipulation as Exhibit 9 for identification, and the remaining checks will be Exhibit 8.

(The documents above referred to were marked Petitioners' Exhibit No. 9 for identification.)

Mr. Burrell: Neither one of us at this time knows what the total amount of those checks is, but I believe——

The Court: I will find out in just a minute.

Mr. Reed, go ahead.

(Testimony of Cyrus Sterns.)

Mr. Reed: I offer into evidence Petitioners' Exhibit No. 9.

The Court: Any objection?

Mr. Burrell: No objection.

The Court: Exhibit No. 9 is received in evidence.

(The document heretofore marked Petitioners' Exhibit No. 9 was received in evidence.)

The Court: Would you look at the remaining checks to see if they bear our stamp of Exhibit 8, otherwise the [57] clerk will have to mark them again.

How did you mark those?

The Clerk: Marked them on the back of one check, so I will have to mark these again.

The Court: Yes, mark them again and cross stamp off the other.

Mr. Burrell: You are offering these additional checks?

Mr. Reed: They are already marked for identification.

The Court: Wait a minute, please.

Mr. Reed: Your Honor,—

The Court: If you will wait just a minute, please. May I see Exhibit No. 9, Mr. Clerk?

Mr. Reed, where is the check that has our stamp for Exhibit No. 8 for identification on it?

Mr. Reed: Right here, your Honor.

The Court: Where is the original? The Clerk has marked two things Exhibit 8.

The Clerk: I just put this stamp on, but I pre-



(Testimony of Cyrus Sterns.)

viously marked Exhibit 8, and I don't see that check in this bunch, your Honor.

The Court: Have you kept out a check somewhere?

Mr. Reed: No.

The Court: Here it is. I have it. I am crossing [58] out the stamp on one of the checks that is in Exhibit 9. That straightens that out.

During the recess the Clerk will add up Exhibit 9 on the adding machine tape, which we will show to counsel, and we will know what the total of those checks are.

Now, I think with respect to Exhibit 8 that you would have to ask the witness some questions before you could offer those in evidence.

Q. (By Mr. Reed): Mr. Sterns, I show you Petitioners' Exhibit for identification No. 8, and ask you if you have seen those before, and what are they?

A. These are all nurses that served me while I was in the hospital.

The Court: When was that?

The Witness: Well, that was in—I was taken to the hospital—my accident was on December 12th, I think, of '44.

The Court: What accident?

The Witness: Well, I was in an automobile accident.

The Court: What happened?

The Witness: Well, I had a brain concussion. I had both arms mashed, and I was unconscious five

(Testimony of Cyrus Sterns.)

days or six days, and they sewed me up. My whole nose was cut off—cut there. [59]

The Court: Where was the accident?

The Witness: Between Modesto and Turlock.

The Court: What hospital were you in?

The Witness: I was in the Turlock Hospital there from that morning until the following morning, when they got an ambulance and a nurse and a doctor that drove me down to St. Vincent's Hospital.

The Court: Where was that hospital, in Los Angeles?

The Witness: That is in Los Angeles at Third and, I think it is at Alvarado, or one of the streets there.

And, incidentally, while I was unconscious they robbed me of \$1,700.00—moneys that I had collected.

The Court: Anyway,—may I see those checks?

The Witness: I was incapacitated about nine months.

The Court: These checks are all signed by Mrs. Cy Sterns.

The Witness: Yes.

The Court: The bank is the Beverly Hills office of the California Bank. What kind of an account did you have in that bank in 1944?

The Witness: Well, it was—she had the right, the privilege to sign on my account, or vice versa.

The Court: Well, Mr. Reed, these checks—the witness says that he had an accident on December

(Testimony of Cyrus Sterns.)

12, 1944. Now, assuming that there are 30 days in December, that 18 [60] days in December——

The Witness: We had three nurses on it, your Honor.

The Court: You would have to explain how you could have so much owing to nurses, because you have checks here running from \$32.00 to \$64.00, and there are seven checks. And you will have to——

The Witness: Well, for a while,——

The Court: You will have to clear that up. Evidence has to be specific on all these matters.

Q. (By Mr. Reed): How much were these nurses paid for each shift?

A. I think at that time either \$8.00 or \$9.00 per shift.

The Court: What? What does “shift” mean?

The Witness: Eight hours.

The Court: All right.

The Witness: For a while I had three nurses a day to cover the 24 hours while I was unconscious.

Mr. Reed: I haven't totaled these, your Honor.

The Court: Those are things you have to do.

Mr. Reed: I offer these checks, marked Petitioners, Exhibit 8.

The Court: How much do they come to, Mr. Reed, before you offer them? Take a minute to add those up on the six checks. Are they all made payable to the same payee? [61]

Mr. Reed: No, your Honor.

The Court: Are they all different payees?

Mr. Reed: No.

(Testimony of Cyrus Sterns.)

The Court: Do you have two checks to one person?

Mr. Reed: There are two checks to each, to two persons and three checks to one person.

The Court: Well then, add it up that way.

Mr. Reed: On varying amounts.

The Court: All right.

Mr. Reed: \$302.00.

The Court: Is that the total?

Mr. Reed: Total.

The Court: What is the breakdown of that? How much is paid to whom?

Mr. Reed: To Agnes Connelly, \$64.00. To Anna Petersen, \$32.00. To Marie Cole, \$120.00. And \$136.00 to Nellie C. Wynn.

I offer these checks as Petitioners' Exhibit No. 8, now marked Petitioners' Exhibit for identification No. 8.

The Court: State your objection.

Mr. Burrell: If your Honor please, Respondent does object to the receipt of these medical expenses, on the following ground: The Petitioner's original return shows medical expense claim reported and claims the sum of \$1,575.00 and totals from two entries, St. Vincente's Hospital and Dr. [62] Maurice Graham. In his amendment filed at a later time there is an addition of eight cents.

His Petition filed in this proceeding, and his statement, Paragraph 5, states that Petitioner paid in 1944 \$1,575.00 for medical, and there is no claim in



(Testimony of Cyrus Sterns.)

the return for this sum. I believe he should make an issue of this if he wants to claim them.

Mr. Reed: Your Honor, I move that the Petition filed be amended—the filed amended return be made to conform to the proof.

The Court: What do those checks add up to, \$352.00? I believe those checks add up to \$352.00.

Mr. Reed: That is correct, your Honor. I was in error with \$302.00.

The Court: You are now claiming deduction for the nursing expense of \$352.00. You wish to amend your Petition to that effect?

Mr. Reed: Yes.

The Court: The motion to amend the Petition is granted. You must file a written amendment to your Petition later.

The checks are received in evidence as Exhibit 8.

(The documents heretofore marked Petitioners' Exhibit No. 8 were received in evidence.) [63]

Q. (By Mr. Reed): Mr. Sterns, in the accident that you mentioned in 1944, who was driving that car?

A. Chauffeur was driving it.

Q. Why did you have a chauffeur?

A. I had fibrinous thrombosis in my left leg; blood clot.

Q. I believe you previously testified that you terminated your business with South Pacific Company prior to this time.

(Testimony of Cyrus Sterns.)

A. Well, our business was terminated, I think July 25th.

The Court: What year?

The Witness: '44.

Q. (By Mr. Reed): Were you offered a job at that time?

A. I was offered a job by Mr. Syracuse in his winery to go out and sell, but I wasn't physically fit.

Q. Who is Mr. Syracuse?

A. Owner of the South Pacific Wholesale Liquor Company.

Q. Did you accept the job?

A. No, I couldn't.

Q. Why? A. I wasn't physically able to.

Q. Since 1944 have you had substantial medical expense? A. Since 1944? [64]

Q. Yes.

A. I have had medical expenses every year since probably '39 or '40, or long before that.

Q. Have you been in the hospital recently?

A. I was in the hospital in May of '53.

Q. What hospital?

A. I was first taken unconscious—I was taken unconscious to Cedars of Lebanon, and they advised my doctor that the examination and one thing and another would cost several thousand dollars, and not having it they removed me to the General Hospital.

Q. What is the General Hospital?

A. That's the County Hospital.

Q. I see. Did you pay your bill there?

(Testimony of Cyrus Sterns.)

A. No.

Q. You mean that is—— A. I owe it.

Q. I see.

A. I was there 11 days, and was unconscious for 11 days.

The Court: How much more will the direct examination of Mr. Sterns take?

Mr. Reed: Very few minutes, your Honor.

The Court: We will complete that, and then recess for lunch for an hour. [65]

Mr. Reed: Will the Clerk please mark these for identification?

The Clerk: Exhibit 10 for identification.

(The document above referred to was marked Petitioners' Exhibit No. 10 for identification.)

The Court: The Clerk has added up the checks in Exhibit No. 9, and the total—if you would like to put this down, please—Exhibit 9, \$1,404.14. Those are checks of varying amounts made to St. Vincente's Hospital, Dr. Graham, Alvarado Hospital, Dr. Bowen, and others.

Q. (By Mr. Reed): Mr. Sterns, I show you Petitioners' Exhibit marked for identification No. 10, and ask you what they are.

A. They are checks made payable to the Collector of Internal Revenue for—some of them are '43, September 15, '43, and some of them are in '44.

Q. Whose checks are they, and what were they for?

A. Well, they are for—I have my income return for 1943.

(Testimony of Cyrus Sterns.)

Q. Did you file an estimate for 1944?

A. Well, I don't know if I did or not.

Q. Some of those checks are dated in 1944.

A. That was paid quarterly for the 1944 income; March 14th, June 14th, '44.

Q. Mr. Sterns, your 1943 return discloses a tax [66] liability of \$1,472.23. Do you find a check for that amount there?      A. \$1,472.23.

Q. In 1944—your 1944 return discloses a tax liability of no tax due, but the 1944 declaration of estimated tax is \$1,050.00. Could it be that those 1944 checks were paid on your 1944 estimated tax liability?      A. Could be. I wouldn't—

The Court: What do the checks add up to?

The Witness: They add up to—I have one check for \$1,472.23. Do you want to add this, Mr. Reed, please?

Mr. Reed: Yes.

The Court: Apparently there is one check for \$1,472.23. You can leave that out because that was explained. Right?

Mr. Reed: Yes, your Honor. These checks total \$2,117.93, payable to the Collector of Internal Revenue.

The Court: His declaration made in estimated tax is \$1,050.00.

Mr. Reed: \$1,050.00. There is some confusion.

The Court: There is something unexplained, isn't there?

Mr. Reed: Yes, there is, your Honor.



The Court: Why don't you pass that and see if the [67] accountant can explain that?

Mr. Reed: All right. No further questions of Mr. Sterns.

Mr. Burrell: Were these introduced? I know you had these identified.

The Court: No, they were just identified. I think that perhaps that can be cleared up later.

How many witnesses have you, Mr. Reed?

Mr. Reed: Three more.

The Court: Three more in addition to Mr. Sterns?

Mr. Reed: But they will not be lengthy witnesses, your Honor.

The Court: Mr. Burrell, you have called some witnesses?

Mr. Burrell: Yes, your Honor, I have three witnesses here, in addition to the agent.

The Court: The witnesses are in the courtroom. I want to tell the witnesses that the trial of this case will extend beyond today, and we will sit until 5:00 o'clock, or 5:15. It will be necessary for you to be in court. No doubt we won't finish today. We may finish by noon tomorrow. After a witness has testified the Court probably will be able to excuse the witness, if the attorney who called you as a witness doesn't require that you be here all of the time, it is agreeable to the Court to have the attorney [68] excuse a witness for an hour or so. These people perhaps have other things that they would like to do.

Now, as far as the Court is concerned, they don't

have to be here, but they must report when they will be needed to testify.

We will recess now until 2:00 o'clock.

(Whereupon, at 12:15 p.m., a recess was taken until 2:00 p.m. of the same day.) [69]

The Court: Will you take the stand, please, Mr. Sterns?

Whereupon,

### CYRUS STERNS

called as a witness for and on behalf of the Petitioners, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Reed: If your Honor please, when we adjourned this morning we were discussing the checks that Mr. Sterns had transferred to the Bureau of Internal Revenue in payment of his estimates for 1943 and 1944. During the recess Mr. Burrell and I have discussed it, and I believe that he will stipulate that these payments were received in 1943 in the amounts of \$332.00 and \$568.00.

Mr. Burrell: If I may, your Honor, I believe I can kind of help Mr. Reed in this regard. In the 1943 return of the Petitioner it shows that he paid, with his filing of the return, the sum of \$1,472.23. That was explained upon the Petitioner's testimony to one check in that amount having been payable and collected by the Internal Revenue Department. Now, the return indicates that his balance of tax due after the sum of \$900.00 has been paid during the year.

The two checks which Mr. Reed read into the record do total, I believe, \$900.00. [70]

(Testimony of Cyrus Sterns.)

So the Respondent is in a position to stipulate that the taxpayer Mr. Sterns did pay more than the requirement upon the liability of 1943, the sum total of—would be a total——

The Court: \$2,372.23.

Mr. Burrell: Correct, your Honor; and Respondent so stipulates.

Mr. Reed: In regards to 1944, the amount of \$525.00 was remitted on April 15, 1944, and \$525.00 on June 14, 1944, all in payment of the 1944 estimate; total amount of \$1,050.00.

Mr. Burrell: Respondent so stipulates, your Honor, with making this notation. The original return of Mr. Sterns, as well as his amended return for the taxable year 1944 both have a request that this sum of \$1,050.00 be credited on his 1945 estimated tax, and inasmuch as his return for the year '44 shows no tax due or payable, it is to be presumed that the Commissioner has done just that.

Mr. Reed: These checks are offered, Petitioners' Exhibit 10, into evidence.

The Court: With that explanation, I think they can be received.

Mr. Burrell: Yes.

The Court: Received in evidence as Exhibit 10.

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 10. [71])

Direct Examination—(Continued)

Q. (By Mr. Reed): Mr. Sterns, did you receive

(Testimony of Cyrus Sterns.)

a refund from the Bureau of Internal Revenue on account of your 1944 payment of \$1,050.00?

A. No, I did not.

Q. Did you have a net income in 1945 that you owe tax upon?           A. No, I didn't.

Q. Therefore, you never have received the benefit of that overpayment of the 1944 tax of \$1,050.00?

A. No, I haven't.

Mr. Reed: That is all.

The Court: You don't know whether he has filed the claim for refund.

Mr. Reed: Have you filed a claim for refund for 1944?

The Witness: I wouldn't know.

Mr. Reed: I believe, your Honor, in our Petition we prayed for an overassessment for both years, 1943 and 1944.

The Court: On that matter, Mr. Reed, you know that we have no jurisdiction over collections or for refunds. All that we can do is to say in the decision that some part of a tax deficiency has been overpaid. I don't know how that [72] will work out in this case. That covers the matter, and I will find out later what I can do with that.

You may inquire, Mr. Burrell. Are you finished, Mr. Reed?

Mr. Reed: Yes. Thank you.

#### Cross Examination

Q. (By Mr. Burrell): Mr. Sterns, I hand you Exhibits 3-C, 4-D and 5-E, which are your individ-



(Testimony of Cyrus Sterns.)

ual tax returns for the year 1944, 1943 and 1944, including your amended return for 1944, and ask you to look at them.

I would like to ask you now whether your return that you filed for the 1943 is correct as filed. Does that accurately and truthfully declare and report your income and your deductions for that year?

A. To the best of my knowledge and belief, it is.

Q. And directing your attention to your original and amended return for the year 1944, does that return accurately and truthfully report your income and deductions for that year?

A. To the best of my knowledge and belief, it is.

Q. Now, in these returns for those two years you have reported certain income. What is the source of that income?

A. In which two years?

Q. 1943. What is the source of your income for 1943, [73] as reported in those returns?

A. From the sale of liquor.

Q. From whom did you receive this income that you are reporting in your return?

A. From the South Pacific Wholesale Company.

Q. Is that the only source?

A. With the exception of where I stated I got \$2.00 a case over on about 900 cases in the San Francisco area through one of the salesmen.

Q. And that would be a sum total of how much?

A. About \$1,800.00 or \$2,000.00.

Q. Does that represent so-called blackmarket income, Mr. Sterns?

(Testimony of Cyrus Sterns.)

A. You could call it that.

Q. Is that a fair characterization of that income?

A. Possibly, yes.

Q. You say that that amount is \$1,800.00 to \$2,000.00?

A. About that.

Q. My notes indicate that upon your examination you testified that you had received total over ceiling receipts of \$4,000.00 to \$5,000.00.

A. That was in 1944.

Q. I see. Then it is your testimony that you received blackmarket income in the year 1943 in the approximate amount of \$1,800.00 to \$2,000.00? [74]

A. Approximately.

Q. And in the year 1944 of \$4,000.00 to \$5,000.00?

A. May I-----

Q. I would rather you answer my questions.

A. I would like to elaborate on that, if you don't mind.

Q. That is all right.

A. I represented a fellow who is connected with Hannack Distillers, who had chased me all over the state three different times promising to give me merchandise. Finally, he came along with a deal that was to be billed at \$39.00. But they wanted \$10.00 overage or in excess of the ceiling price.

I sold that merchandise, I sold about—at the time of my trial in San Francisco, I recall I sold 250 cases, that I could remember.

But there was one concern in San Luis Obispo, I think it was, that gave me some money and they never got any merchandise. I had paid these people

(Testimony of Cyrus Sterns.)

I think \$10,000.00, a little bit over \$10,000.00 for a thousand cases. As I say, they delivered about 400 cases, and on my way back, that was the time when I had this automobile accident, and I was robbed of most of the money, about \$1,700.00, and they still owed me \$6,800.00. I made about \$4,000.00. They owed me \$6,800.00.

And when I got well enough to have them come over and see me, I said, "Say, listen, you only delivered 400 cases. You were supposed to deliver a thousand." [75]

They said, "Take your best shot. That is all you are getting. That is the total."

Instead of making \$4,000.00 I lost \$2,800.00. Now, that is as far as I went in the blackmarket.

Q. I see. Mr. Sterns, you were served with a subpoena in this case at the request of the Respondent, were you not?

A. I don't know. I was served with a subpoena, yes.

Q. That was at the request of the Respondent. I would like to state, naturally, that you were not served for the purpose of making you our witness, but for the purpose of your being in court only—a subpoena duces tecum to ask you to bring into the court a record of your income and deductions for the two years involved herein. Have you done that?

A. Yes.

Q. Can you state for me—and if it is necessary to have your memory refreshed, look at certain documents—can you state the income you received for

(Testimony of Cyrus Sterns.)

each of the two years, 1943 and 1944, from South Pacific Wholesale Company?

A. Well, I can't give it to you to the penny without first—I think about a gross of \$26,000.00; then after deducting my allowable expenses and so forth, I think the net was about \$14,000.00 in '43.

Q. How much net taxable is reported in your 1943 return? [76] A. Whatever that was.

Q. I hand you your return. You may refer to it.

A. I think—was there amended something to this? Amended something?

Q. I don't believe that your 1943 return was amended, Mr. Sterns. Your 1944 return was.

A. There's "Amended."

Q. I see.

A. All I had to go by is what they gave me, a statement showing, I think, \$26,000.00, if I remember correctly.

Q. What do you show in your 1943 return as your receipt from South Pacific Wholesale Company, Mr. Sterns?

A. Yes, but I earned this money from Greski and earned from some——

Q. Read it.

A. \$14,887.00; Greski Company, \$2,380.00, and Von Runkel, \$480.00.

Q. Does that comprise your entire taxable income for the year 1943? A. I would say so.

Q. A few minutes ago you testified that in 1943 you received——

A. I think I saw an article where I saw it \$26.-



(Testimony of Cyrus Sterns.)

000.00. I didn't take out the deductions. And I said about \$14,000.00 net taxable. [77]

Q. Can you point out, Mr. Sterns, where in your return you have reported the blackmarket receipts that you have already testified that you received in 1943? Does that show in your return?

A. My expenses would more than offset that; somewhere, I don't know where.

Q. Are you referring now to expenses which show in your return or which do not show in your return? A. I wouldn't know one or the other.

Q. I hand you your return, your original amended return for the year 1944, and ask you to point and read the amount of net taxable income that you received from South Pacific Wholesale Company in that year?

A. I wouldn't know without looking at — of course, they wouldn't know what my losses—they wouldn't know what my expenses——

Q. I am asking you to point out what is in your return.

The Court: You mean by "they"——

The Witness: South Pacific wouldn't know what my expenses were, who I paid for deposit for merchandise.

The Court: That isn't the point, Mr. Sterns. The point is this: You are required to make up your return in a certain way. You testified that you had an accountant make up your return, is that right?

The Witness: That is **right**.

The Court: What was his name?

(Testimony of Cyrus Sterns.)

The Witness: Cy Tanner.

The Court: Mr. Tanner is the person who is supposed to have made up your return with all the details, not the South Pacific Liquor Company?

The Witness: He took them from memorandums that I had given to him, and I hadn't kept any books, due to the fact I was expecting to get—I was operating through the South Pacific Company, and their records and so forth, the records that I went by. They said I delivered 13,000 cases. They take off \$2.00 a case and the difference I got. That is what it amounted to.

The Court: You mean in making up this return, net figures were put down instead of gross figures and then——

The Witness: No, they give me an example, say, \$26,868.00——

Mr. Burrell: What are you reading from?

The Witness: Right here.

Mr. Burrell: You are reading from what?

The Witness: Cy Tanner's statement.

The Court: 1944 return or——

The Witness: 1943.

Mr. Burrell: Schedule attached to your '44 tax return, is it not? [79]

The Witness: '44 or '43, I don't know. '44.

Mr. Burrell: Do you wish me to proceed, your Honor?

The Court: Yes.

Q. (By Mr. Burrell): You have just read commissions in the amount of \$26,868.82 from your 1944

(Testimony of Cyrus Sterns.)

return. From whom did you receive those commissions? A. I got those from South Pacific.

Q. Does your return indicate any other receipt of taxable income?

A. I wouldn't know.

Q. Well, read your own schedule, Mr. Sterns. Did you?

A. I didn't make that schedule out.

Q. You signed this return, didn't you?

A. Yes, I signed it to be correct. I am not an auditor.

Q. Inspect it, Mr. Sterns. Does it show any other entry which could be reasonably construed as income?

A. It may be included. I don't know if they included in there—I don't know what I got from South Pacific. I don't—I may have said I got \$3,000.00 or \$4,000.00; made \$3,000.00 or \$4,000.00 extra, and had——

Q. Do you understand my question?

A. Yes.

Q. But you are unable to answer it?

A. That is right. [80]

Q. You have testified, according to your own testimony, that during the year 1944 you had black-market receipts of \$4,000.00 to \$5,000.00. Are those blackmarket receipts in your return?

A. No, because they are not receipts; loss instead of a receipt. It was a loss.

Q. All right.

A. If I collect \$4,000.00 and lose \$6,800.00, I don't have any income. I had a loss.

(Testimony of Cyrus Sterns.)

Q. Does your return for 1944 include any black-market receipts for income?

A. I don't know. I would not know. After all, it is ten years, and I certainly—I am not trying to evade the answer, either.

Q. During the year 1944 did you sell any whiskey at over the OPA legal maximum?

A. I just told you about this incident here, wherein I sold about 400—I am even possibly going over the amount, because I have no accurate way of checking. These people had even given me \$1,200.00 as a deposit. I have a letter from them and a letter from their attorney where they received the money, and I didn't know whether these other people had sent them any whiskey. That is the time I was on my way back and in that automobile accident.

Q. Did you during the year 1944, and to be exact, on or [81] about February 21, 1944, sell to one A. W. Jensen 100 cases of Rocky Springs blended whiskey at a price of \$60.00 per case, at which time and place the legal maximum for that liquor was \$29.65 a case?

A. In February '44?

Q. Yes.

A. February '44—was not sold through me, that I know of.

The Court: What was the legal maximum?

Mr. Burrell: My question was intended to give the price of \$29.65 per case.

Q. (By Mr. Burrell): Were you convicted of a



(Testimony of Cyrus Sterns.)

crime in the Southern Division of the United States District Court for the Northern Division of California on October 17, 1946, for willfully and knowingly selling 100 cases, containing 12 bottles each, of Rocky Springs blended whiskey to one A. W. Jensen, at \$65.00 a case, when the legal maximum for said whiskey was \$29.65 per case?

A. I don't remember that accusation at that time. There was an affidavit made by the man who sold the whiskey, not me.

Q. In February 1944 did you have a salesman employed by you by the name of Harry Lewis?

A. Yes, and Friedland. [82]

Q. Both employed by you as salesmen at that time?

A. In '44, February? I would say yes.

Mr. Burrell: Your Honor, I should like to introduce at this time a certified copy, certified by the clerk of the appropriate court of the judgment and conviction of the Petitioner Mr. Sterns for violation against the Emergency Price Control Act of 1942, as amended, and in substance, what I have just previously read into the record.

The Witness: I did not deny that.

Mr. Burrell: I offer it.

The Witness: I was convicted as a misdemeanor and fined \$500.00—only conviction I ever had, if that is a conviction. And I didn't get that money.

Mr. Burrell: There is the offer.

The Court: Any objection?

Mr. Reed: No objection.

(Testimony of Cyrus Sterns.)

The Court: Received in evidence as Exhibit F.

(The document above referred to was received in evidence and marked Respondent's Exhibit F.)

Q. (By Mr. Burrell): Did you keep books of account of the business that you did for the years 1943 and 1944?

A. No, I didn't keep the books. I kept memorandums.

Q. Are these memorandums sufficient to detail and complete so as to properly reflect your income and deductions [83] for those years?

A. Well, that is what the auditors worked on, from the records that I gave them.

Q. Do you have those records in court with you?

A. Some of them. I tried to go over some of them myself and I can't figure out what they are.

Mr. Burrell: Will you produce them at this time, please? I may be noted, your Honor,—I believe I may have mentioned this—the subpoena was served on Mr. Sterns to produce records of this sort.

The Witness: All the records and so forth are with the auditors.

Q. (By Mr. Burrell): Is this the sum total of your books of account of 1943 and 1944 of your business, and other operations? A. Yes.

Mr Burrell: I should like to introduce this book as Respondent's Exhibit G.

The Court: Any objection?

Mr. Reed: No objection, your Honor.

The Court: Received in evidence as Exhibit G.

(Testimony of Cyrus Sterns.)

(The document above referred to was received in evidence and marked Respondent's Exhibit G.)

Mr. Reed: May we make that a joint exhibit?

The Court: No, it is not necessary. It would be difficult to handle our exhibit numbers that way. You could have offered it if you wanted to earlier.

Q. (By Mr. Burrell): Mr. Sterns, could you, by an inspection of the book of account, so-called, just introduced as Respondent's Exhibit G, advise the court of the amount of income and deductions which you would be allowed under the Internal Revenue Code for the years 1943 and 1944?

A. I wouldn't know.

Q. Does Respondent's Exhibit G, the so-called book of account, indicate any sales of whiskey made by you during the years 1943 and '44, in which you received blackmarket overages? A. No.

Q. They do not. Mr. Sterns, on your direct examination, you testified early in your examination that you had an arrangement for the purchase of I believe 900 cases of Baltimore Club, that you paid for and received the Baltimore Club Whiskey; is that correct? A. That is right.

Q. I should like to ask you this: Could it be that the correct number of cases of Whiskey received of the Baltimore Club brand was 618 cases?

A. No, sir.

Q. Whatever the correct number might be, were they [85] received by or billed out by South Pacific Wholesale Company?

(Testimony of Cyrus Sterns.)

A. The reason for that discrepancy——

The Court: Just a minute. Answer the question, and then you can explain it afterwards.

Read the question.

Mr. Burrell: I will make it easier.

Q. (By Mr. Burrell): Did the South Pacific Company receive any part of the Baltimore Club Whiskey to which we are now referring?

A. They received part.

Q. Do you know how much?

A. That may be around 600 cases.

Q. Would these 618 cases that they might have received been delivered by them to the retailers designated by you and invoiced from South Pacific Wholesale Company to these retailers?

A. Yes.

Q. Might South Pacific Wholesale Company paid the distiller for the 618 cases?

A. Definitely not; positively not. May I give you a little story on that?

The Court: Go ahead.

The Witness: Do you want me to explain that?

The Court: Go ahead.

The Witness: I got a letter, or got a card from [86] the Equalization Board, and I happened to be down at the Terminal. I called up, I called up some of these customers and I said, "I am going to get some whiskey today, and you meet me at the Terminal warehouse." And I called the girl and she said, "Your wholesale liquor license is here." She took for



(Testimony of Cyrus Sterns.)

granted that the sales tax card was the wholesale liquor license.

And I delivered at the warehouse about 300 cases, and told them that I would bill them the next day; that I didn't know what my license number was, and so forth.

The Court: To whom?

The Witness: To the various customers; I don't know. But the next day the Board of Equalization, or somebody, reported that I was delivering whiskey from the warehouse, and in fact, 50 cases—I don't remember the amount, 50 cases or more—went on to San Bernardino, up to beyond San Bernardino, and they never heard of me, the Board of Equalization; and they called up their local office and stopped delivery of all the other whiskey. That was how we got together with the Pacific, South Pacific Company, and the Board permitted the South Pacific Company to bill all that whiskey. That is where you get your 900 cases instead of three hundred and some cases.

Q. (By Mr. Burrell): Does that complete your explanation? [87]

A. That completes it.

Q. Mr. Sterns, of the several thousand cases of whiskey which you handled through the offices and license permit of South Pacific Wholesale Company, what proportion, percentage-wise, would have been the Rocky Springs brand that came from the distillery in Seattle? You may approximate that for our purposes.

A. You mean how many cases from—

(Testimony of Cyrus Sterns.)

Q. I have asked actually for an approximate percentage, and that will be satisfactory for the moment.

A. 90, 85, or 90—85 per cent, somewhere around in there, I would say.

The Court: I don't understand. Sorry to interrupt. You mean 90 per cent of all the whiskey you sold was Rocky Springs whiskey?

The Witness: No, your Honor. Rocky Springs, U.D.L. Bourbon, U.D.L. Straight—I presume you mean from that distillery direct?

The Court: What is your question?

Q. (By Mr. Burrell): My question is, of all the whiskey that you handled through South Pacific in these two years, what percentage would have been the brand of Rocky Springs?

A. I can't answer that.

Q. Can you approximate it? You were the man handling [88] it, Mr. Sterns.

A. I know, but, Mr. Burrell, this is ten years, and I have handled whiskeys and one thing and another.

Q. Was it a substantial proportion?

A. Yes, the greatest portion would be Rocky Springs.

Q. The greatest portion?                   A. That is right.

Q. That is the same whiskey referred to in Respondent's Exhibit G, is it, the conviction with respect to which you were convicted of OPA violation—F, excuse me.                   A. Yes, I think so.

Q. Could you tell us how much the Rocky

(Testimony of Cyrus Sterns.)

Springs brand cost per case from the distillers? That is, the cost to South Pacific Wholesale Company?

A. I can't tell you that. We have the invoices.

Q. Would it have been the same cost through the two years, or—— A. No, sir.

Q. ——would it vary? The same brand varied?

A. Definitely.

Q. Within what price ranges?

A. Oh, \$4.00 or \$5.00,——

Q. Can you give us those figures?

A. I couldn't give them to you. I would have to have the invoices. I think Mr. Radke could give you those figures. [89]

Mr. Burrell: I would like to have this figure, your Honor, and I am perfectly willing——

The Court: Would you please produce the invoices?

Mr. Burrell: I don't know any exact figure or—I only want figures to work on.

Q. (By Mr. Burrell): Mr. Sterns, I hand you what purports to be a 1943 invoice from Old Monastery Company, which comes from your attorney's records, indicating the purchase by South Pacific Wholesale Company from a distillery of 1,500 cases of Rocky Springs Blended Whiskey at the unit price of \$23.58 per case.

Have I read this correctly?

A. You have read that correctly, but that is not the price of the whiskey.

(Testimony of Cyrus Sterns.)

Q. What would be the price of the whiskey that you have in mind?

A. That would be \$23.58, \$1.00 for freight, \$1.92 state tax, \$2.00——

Q. What is the \$2.00 for?

A. Clearing cost.

Q. To whom is that paid?

A. South Pacific.

Q. You mean you are paying to South Pacific?

A. That is right.

Q. My question to you has been this: What was the [90] cost to South Pacific?

A. South Pacific had nothing to do with the cost. I am giving you the cost of the merchandise.

The Court: Whose invoice is that, Mr. Burrell? What is the printing on the top of the invoice?

Mr. Burrell: "Old Monastery." To South Pacific.

The Court: Therefore, that would be, Mr. Sterns, what Old Monastery was charging South Pacific.

The Witness: But then there is additional charges.

The Court: We have to take one thing at a time, as I warned you before. If South Pacific is then going to charge you something——

The Witness: That is the price from the distillery.

Mr. Burrell: That is what I wanted.

The Court: It is possible, Mr. Burrell, that the shipper would include freight charges.

Mr. Burrell: I assume somebody had to pay them.



(Testimony of Cyrus Sterns.)

The Witness: I paid them, charged to my——

Mr. Burrell: I believe the line of questioning I have in mind can be put properly into the record without going into that, and I will attempt to, with your permission, go to another line.

Q. (By Mr. Burrell): Your arrangement in brief—this is in the stipulation of facts and also in your testimony—your arrangement [91] with South Pacific Wholesale Company was this: That in consideration of your paying them \$2.00 per case, which was the only consideration they received for this service; that they would have and receive the 15 per cent mark-up allowance, OPA regulation, on this cost; that out of that they would pay expenses, such as freight, taxes, et cetera, and account to you for the difference. Is that not correct?

A. All charges—it may answer the same thing, but all the charges were added to the cost, and then they would take \$2.00 for the clearance.

Q. Where was your profit then? Was it not in the 15 per cent legally allowed mark-up?

A. That is correct.

Q. And offsetting against that would be expenses such as taxes, freight and so on——

A. That is correct.

Mr. Burrell: Is that clear, your Honor?

The Court: How do you tie it in, Mr. Burrell, with the cost per case on the invoice?

Mr. Burrell: South Pacific Company, for example, would take this cost——

The Court: How much is that? \$23.58 per case,

(Testimony of Cyrus Sterns.)

they could mark that price up without respect to taxes, freight, et cetera; could mark that up 15 per cent?

The Witness: Plus—— [92]

The Court: Wait a minute. 15 per cent mark-up is the first thing. All right. That is added to \$23.58. Plus what?

The Witness: Plus \$1.00 freight, plus \$1.92 state tax,——

The Court: Supposing you wait a minute. Mr. Burrell, would you go ahead? 15 per cent mark-up.

Q. (By Mr. Burrell): By adding these basic costs of the South Pacific Company, we arrive at the price this liquor was sold to the retailer, the ultimate purchase price of the purchaser from South Pacific. The only margin of profit involved in each case is the 15 per cent mark-up——

A. That is right.

Q. ——which South Pacific Wholesale Company had to account to you.

A. That is right.

Q. Roughly, how much is 15 per cent of \$23.58, Mr. Sterns? Is it not approximately \$3.50?

A. About that.

Q. So out of this \$3.50 on which you must conduct your business at a profit, if at all, you are going to pay \$2.00 to South Pacific, their fee, is that correct?

A. On that particular merchandise.

Q. Yes. That leaves you now \$1.50 on which to operate. [93]

A. That is correct.

Q. How much did you pay your salesmen?

(Testimony of Cyrus Sterns.)

A. \$1.00 a case.

Q. That leaves you 50 cents. How much were your office expenses for doing this business?

A. I would have to again—I have an audit that will give us all our expenses, but I think—you are picking the lowest price merchandise.

Q. It is your invoice, not mine.

A. That is right.

Q. Let's stick with that just for a moment. Even if we take a higher one we would come up with the——

A. Then the average runs more per case.

Q. Could you possibly have operated this business at a profit on the basis of that 1,500 cases to which we just referred?

A. You don't just operate a business on one particular invoice.

Q. That is 1,500 cases.

A. I don't care if it is 27,000 cases; you just don't operate a business on one particular priced merchandise. A lot of people give merchandise away in order to build up a business.

The Court: Counsel asked you a few minutes ago if the Rocky Springs whiskey, what percentage of all the whiskey [94] handled by South Pacific was Rocky Springs whiskey, and you said that most of it was.

The Witness: Most of it ran \$44.00 a case, with your additional costs.

Mr. Burrell: I am going to give you a chance to correct your testimony.

(Testimony of Cyrus Sterns.)

But if the margin were larger, because the cost per case were larger, since those various handling charges are fixed charges, then his margin goes up as the cost per case of liquor handled increases.

Now, am I correct in my understanding?

Mr. Burrell: Yes, I believe you are, your Honor.

The Court: I believe, instead of asking him to rely on his memory, and instead of his arguing about it, the best thing to do is right now look at the invoices.

Mr. Burrell: If need be, we will put them in the record. I had hoped there would be a schedule which would make it easier for you and easier for me.

The Court: Mr. Reed can assist you at this time. [97]

Mr. Burrell: May we have about a two-minute recess?

The Court: We may. It will shorten the time eventually, Mr. Burrell and Mr. Reed. The reason for my making these inquiries, in the long run, it reduces the time that I have to give to decide the case. So this is all in the interest of expediting everything. We will take a few minutes' recess.

(Short recess taken.)

Mr. Burrell: Mr. Sterns may resume the witness stand, but I believe for a moment Mr. Reed and I can, by stipulation and introduction of documents, clear the record on the line of testimony that I have been attempting to elicit for some minutes before the recess.

The Court: Very good.



(Testimony of Cyrus Sterns.)

Mr. Burrell: First of all, Mr. Reed has some computations and lists which have been prepared under his direction showing the invoices and breaking them down as to type of brand, number of cases, and amount of money involved. These were actually prepared by Mr. Reed, so it probably would be more appropriate if he introduced them as his exhibits.

The Court: I would rather have you do it, if you don't mind, Mr. Reed.

Mr. Reed: Yes. I ask the Clerk to mark these as Petitioners' exhibits for identification. [98]

The Clerk: Exhibits Nos. 11 and 12, for identification.

(The documents above referred to were marked Petitioners' Exhibits Nos. 11 and 12 for identification.)

Mr. Reed: If your Honor please, I move that these exhibits be admitted as Petitioners' Exhibits in evidence Nos. 11 and 12. They are schedules prepared by an expert, and they itemize the invoices, the sales and expenses of Cy Sterns in his transactions with South Pacific, and many of his other transactions outside of South Pacific.

The Court: Those are received in evidence as 11 and 12.

(The documents heretofore marked Petitioners' Exhibits Nos. 11 and 12 were received in evidence.)

The Clerk: 13 and 14 for identification.

(Testimony of Cyrus Sterns.)

sale Company of \$23.58, the identical figure that we discussed earlier with Mr. Sterns on the witness stand, and which last purchase of Rocky Springs, I believe, was in the amount of \$30.07 per unit case.

Is that correct, Mr. Reed? You have the figure before you. [101]

The Court: I do not see in Exhibits 11 and 12 precisely the analysis which you have just stated for the record. It doesn't appear anywhere in that precise way, does it, as a summary?

Mr. Burrell: The total figures do not appear, no, your Honor. We have totaled them ourselves during the recess, and that is why I called on Mr. Reed to stipulate the total figures. Is that what you are referring to?

The Court: Yes, because I—for example, page 14.

Mr. Burrell: Of 11, your Honor?

The Court: Of 11. It shows cases bought from Platt, Monastery, Dunbar, and U. D. L., with additional—this is just as shown by books of South Pacific. It would be necessary to total the net number of cases bought, net after breakage. Then there is a cost for loss of cases, for instance, 1,000 cases less breakage. You would have to divide the number of cases net into the total cost net in order to get unit cost per case.

Mr. Burrell: Yes.

The Court: Now, how do you get a cost per case of \$23.58? Do you find that on the invoices?

Mr. Burrell: Yes, your Honor, on the invoices

(Testimony of Cyrus Sterns.)

introduced as Petitioners' Exhibits Nos. 13 and 14; and in addition, during the recess Mr. Reed and his people made the divisions necessary and penciled the amounts down on our [102] copy, which I should have advised your Honor. Is there some way that it——

The Court: You can have the Court's copy back and conform the Court's copy with your copy. Mr. Reed denies that the unit cost was \$23.50 a case. Mr. Reed?

Mr. Reed: Yes, I do.

The Court: Mr. Sterns, I mean.

Mr. Reed: Mr. Sterns.

The Court: Mr. Sterns here on the witness stand seems to deny that the cost was \$23.50 a case.

Mr. Reed: We have one invoice, \$30.07 a case.

The Court: Well,——

Mr. Reed: 2,000 cases here.

The Court: ——it might save some time to have Mr. Sterns step down and have him actually look at the invoices. I don't want the thing in doubt. This seems to be a matter that can actually be proved, and I want you to stipulate, if you can, something that will indicate whether the cost per case of liquor was very much more than \$23.50 in some instances, and the volume of merchandise where the cost was more than \$23.50.

Mr. Burrell: The penciled corrections that Mr. Radke is making now for your Honor will show that precisely.

The Court: Very well.

(Testimony of Cyrus Sterns.)

Mr. Burrell: However, I believe that Mr. Reed [103] stipulated earlier, and if he didn't, I am sure he will now, that of the ninety-three hundred some odd cases of Rocky Springs purchased and handled by South Pacific to the account of Mr. Sterns, all of it was at the unit cost per case to South Pacific of \$23.58, except the very last delivery of, I believe, 2,000 cases——

Mr. Reed: Yes.

Mr. Burrell: ——which were at the unit cost of \$30.07.

The Court: Do you so stipulate, Mr. Reed?

Mr. Reed: Yes, ma'am.

Mr. Burrell: Inasmuch as that is over 70 per cent of the activity of Mr. Sterns, my line of testimony was directed at the certain thing, which I am sure your Honor was aware of. I don't for my purposes, have any more—I think nothing more need be said about it. I am sure it is clear in this record what I was trying to get at.

The Court: Yes, I think it now is.

Mr. Burrell: Are we ready to proceed, your Honor?

The Court: We are.

Mr. Burrell: Thank you.

Q. (By Mr. Burrell): Mr. Sterns, do you know a Mr. Robert E. McClain, formerly of San Bernardino, California?

A. McClain? His name is familiar. I can't place him. [104]

Q. Can you testify whether or not you contacted



(Testimony of Cyrus Sterns.)

Mr. McClain at his place of business at 469 Third Stree, San Bernardino, California, sometime in September or October, 1943, offering at that time to sell him 100 cases of whiskey at \$52.50 a case?

A. I don't remember whether that is the right person or not. I remember making a call—I think I was introduced to him by a fellow by the name of Rosy Henderson, if that is the one. It's been——

Q. If that is the one, did you sell him any whiskey?  
A. I sold him some whiskey.

Q. How much?

A. I don't remember. I would have to look at our invoice.

Q. Do you know the price?

A. The price was whatever he bought it for, \$29.00, \$32.00 or \$44.00, whatever it was.

Q. You mean the OPA maximum, no more?

A. That is right.

Q. Did you accept from him any blackmarket overage?  
A. No, I did not.

Q. Was the whiskey which you may have sold to him and may have delivered to him from South Pacific, invoiced to him directly from South Pacific Wholesale Company?

A. It was, with the exception—I delivered to him [105] at the Sycamore Inn—if that's the man I think it is—35 or 40 cases of Grandad, Old Taylor, some Harper's Scotch that I purchased in the open market for him.

Q. Are you finished, Mr. Sterns?  
A. Yes.

(Testimony of Cyrus Sterns.)

Q. Did you receive and deposit in your bank account any moneys from Mr. McClain?

A. Yes, yes.

Q. For what purpose?

A. For the purpose of paying for the whiskey that I delivered to him.

Q. It is your testimony, is it, that he paid you the OPA ceiling price, and no more, for the whiskey which you ultimately delivered to him?

A. In fact, it was Rosie Henderson who sold him the whiskey to start with. And after I had shipped him some whiskey—in fact, if I remember, the man, he went East to try to get whiskey for himself, so his wife said, and then he called me. And, in fact, I met him one night over at Lyman's, and he came over to me that night and said he had to have some bar whiskey, and that is when I delivered 35 or 40 cases of whiskey to him, in the presence of Mr. Henderson. They call him Rosie; owned the Sycamore Inn.

Q. Do you have the man identified in your mind now? You are quite certain of whom you are talking about? [106]

A. If that is the fellow. I only sold one party in San Bernardino that I can recall.

Q. Are you quite certain that you did not accept and receive from him any blackmarket overage?

A. I did not.

Q. Do you know the amount of money you did receive from him?

A. No, I wouldn't remember at this time.

(Testimony of Cyrus Sterns.)

Q. Did you account to South Pacific Wholesale Company for all the money he did pay to you, whatever the amount might have been?

A. South Pacific had nothing to do with merchandise that I——

Q. You mean you sold it directly on your own without going through South Pacific?

A. That is right.

Q. Did you at that time have a federal license to——

A. I did not.

Q. Wouldn't that be illegal?

A. I acted as an agent. You can give me money, and I can go out to a retail store——

Q. This is not whiskey that was delivered either to you or South Pacific from a manufacturer?

A. No. I went out to retail stores and bought whiskey.

Q. Do you think there is a chance that you are referring [107] to some other person than I am, Mr. Sterns; Robert E. McClain, San Bernardino, California?

A. Is that the man that was back East? Did he go back East to buy whiskey?

Q. Not to my knowledge, sir.

A. If that is the man, that is Robert McClain.

Q. Let's pass that one. Do you know a Mr. Luther J. Smith, or did you in 1943, the proprietor of the DeAnza Cafe at 5007 Melrose Avenue, Los Angeles? Did you know that gentleman?

A. I have a little memorandum there. May I

(Testimony of Cyrus Sterns.)

have that, in front of Mr. Radke; my writing there. That is it. J. Smith?

Q. Luther J.

A. Well, I have a J. Smith that bought six cases of liquor, late in delivery. Meantime he sold his place. We delivered six cases, and refunded his deposit.

Q. You have referred to "his place." What is the name? A. I don't have it on there.

Q. Are you certain we are now referring to the same gentleman?

A. I have another B.M. Smith.

Q. You don't know of your own knowledge to whom I am referring?

The Court: We have got to get together on this to [108] some extent. If you have some other records down on the counsel table, you can step down and get them.

The Witness: Is the man in court?

Q. (By Mr. Burrell): The man is in court.

A. Is that the gentleman in the blue suit? That is the man I am talking about.

Q. That is Luther J. Smith. A. Yes.

Q. Did you sell him any whiskey in 1943?

A. Six cases.

Q. What brand? A. Rocky Springs.

Q. Did he pay any money to you personally and directly in respect to that purchase?

A. I don't remember. No, I don't think he did pay me directly; however, I handled him.

Q. If he didn't pay you directly, what did he do?



(Testimony of Cyrus Sterns.)

A. He came in——

Q. What did he do in this purchase of the whiskey, pay somebody else for it?

A. You don't give me a chance to answer. I am trying to answer.

The Court: We would like you to answer the question first, and—— [109]

The Witness: He did not give me personally any money. He gave it to one of the boys or one of the salesmen.

Q. (By Mr. Burrell): One of your salesmen?

A. Yes. Now, I couldn't even remember which one it was, but I know he came in sometime later and he was raising the devil, and we were late in delivering the merchandise to him. In the meantime he sold his place and we delivered six cases to him because he wanted that much to carry him over until he made the transfer to the person that bought it, and refunded the balance of his money. That is all our records show, six cases.

The Court: You say that is all your records show?

The Witness: That is all my delivery records show.

The Court: Where are those records, please?

The Witness: You have them there.

The Court: I think, Mr. Reed——

The Witness: You got them there. I took them out of that this morning.

The Court: I think, Mr. Reed, that where your witness, where your client feels that he must refresh

(Testimony of Cyrus Sterns.)

his recollection from some memoranda, and then indicates that his memoranda is made from some records, then we ought to have the records.

Mr. Reed: Mr. Sterns, are you referring to your [110] black book here?

Mr. Burrell: Are you referring to invoices?

The Court: He is pointing to the counsel table.

The Witness: Mr. Radke, in that '43 you will find in that thing that you just made up, you will find J. Smith, six cases, \$177.00.

Mr. Burrell: Do we have the invoices here in court from South Pacific to these persons to whom you dealt?

The Court: You can step down, Mr. Sterns, to locate that.

We will take a short recess.

(Short recess taken.)

Mr. Burrell: Your Honor, I should like the record to show that in response to a subpoena served upon Mr. Syracuse, proprietor of the South Pacific Wholesale Company, he has produced in court the original invoices of the liquors which they delivered and billed out during the years involved; that the immediate purpose of this cross examination, counsel for the Petitioner and myself have taken out of those books and selected those invoices which pertain, in the first instance, to Robert E. McClain, John Randolph and Luther J. Smith, and at this time I should like to introduce them. And I believe it would be manageable if they were in one group clipped together, and I will introduce them

(Testimony of Cyrus Sterns.)

as Respondent's Exhibit next in order. I can't recall what that is. [111]

The Clerk: H.

Mr. Burrell: Respondent's Exhibit H.

Mr. Reed: No objection.

The Court: Received as Exhibit H.

(The document above referred to was received in evidence and marked Respondent's Exhibit H.)

Q. (By Mr. Burrell): At this time I will hand to the witness the various original invoices in Respondent's Exhibit H, and will call your attention first to those here pertaining to R. E. McClain. This is the same McClain, Mr. Sterns, to whom I referred earlier, and with respect to whom I believe there was a little confusion.

Now, you are looking at invoices of South Pacific Wholesale Company. Can you identify those sales and deliveries of whiskey as being whiskeys handled through you, and which you arranged for?

A. If, as I say, he will tell me that he met me through Mr. Henderson, then it is my sale.

Q. Can you tell just by looking at those documents whether or not you arranged for the sale of that whiskey, or those sales?

A. I couldn't answer that.

Q. You have no idea? [112]

A. You take 14,000 cases of whiskey and you want me to identify these, whether those are—

The Court: Let me ask this question: Mr. McClain lived in San Bernardino?

(Testimony of Cyrus Sterns.)

The Witness: That is right.

The Court: You did get orders from him?

The Witness: That is right. I saw the man once or twice, if that is the same man.

The Court: And orders that you would get would have to be filled by South Pacific because you had no license to sell whiskey. Now, isn't that right?

The Witness: That is right.

The Court: So if that invoice shows sales to Mr. McClain through South Pacific—the invoices speak for themselves—South Pacific did make deliveries to McClain.

The Witness: That is true.

The Court: Now, Mr. Burrell, South Pacific presumably kept a record of what they were handling for Mr. Sterns. Is that right, Mr. Reed?

Mr. Reed: Yes, your Honor. All of those particular brands were handled exclusively for Mr. Sterns, as I understand it.

The Court: Mr. Sterns' name doesn't appear on any of the invoices.

Mr. Reed: No. [113]

The Court: But there isn't any question, is there, that these invoices represent the account of Mr. Sterns?

Mr. Reed: That is correct.

Mr. Burrell: Do you so stipulate?

Mr. Reed: Yes.

Mr. Burrell: As to all the documents, John Randolph. Luther J. Smith and McClain, Mr. Reed?

Mr. Reed: May I ask Mr. Sterns?



(Testimony of Cyrus Sterns.)

Mr. Sterns, you heard what I am asked to stipulate. Am I correct? Are they your brands?

The Witness: They are, but I sold this man 35 or 40 cases of national brands which——

The Court: We are not——

Mr. Reed: That are not in there?

The Court: We are not going into that, Mr. Sterns. That may have been another and separate transaction. Again I say we have to take things one at a time and nail them down.

Mr. Reed: Mr. Sterns, do those invoices indicate that your brands were sold in those invoices?

The Witness: Yes.

Mr. Reed: Letter after them, and no others?

The Witness: No; the others would not be invoiced by South Pacific.

Mr. Reed: So stipulated.

The Witness: What I am trying to do, if I may explain, supposing a man gave me a check for \$1,482.00 and I delivered other merchandise for that extra money to him——

Mr. Burrell: We are not involved with any other merchandise. I am referring only to——

The Court: You haven't been asked that question.

The Witness: The attorney asked me how much overage or how much blackmarket.

The Court: Mr. Sterns, we only take up one question at a time. We are making a record. If he asked you that question 15 minutes ago or this morning, it is not the question he is now asking you.

(Testimony of Cyrus Sterns.)

I will go over the whole record and will consider all the questions and all the answers.

Has your question been answered with respect to Exhibit H?

Mr. Burrell: It is my understanding that Mr. Reed stipulated that South Pacific did deliver to the names in those invoices, Respondent's Exhibit H, the merchandise therein shown, and that it was for the account of Mr. Sterns. Is that correct?

Mr. Reed: Mr. Burrell, I have no way of knowing they were delivered to that party. I stipulate those came out of South Pacific's records, and I think they speak for themselves. But as to my knowledge that deliveries were actually made to——

The Court: Anyone here from South Pacific Company? [115]

Mr. Reed: Yes, your Honor; the proprietor.

Mr. Burrell: We will leave it for the moment, if you wish.

The Court: We can call him to the stand and ask him to testify what these invoices are.

Mr. Burrell: Are you prepared to stipulate in a more limited way than the documents in Respondent's Exhibit H, which are invoices to South Pacific to therein named purchasers or of whiskey relating to Mr. Sterns' account?

Mr. Reed: Yes, so stipulated.

Q. (By Mr. Burrell): Now, I will ask you once again: Do these invoices in Respondent's Exhibit H in any way refresh your memory of R. E. Me-

(Testimony of Cyrus Sterns.)

Clain? Do you recall him now, or your dealings with him?           A. I don't remember.

Q. Do they refresh your memory so you now recall your dealings with Luther J. Smith?

A. Only what I said a little while ago, that the argument that I had there simply remains in the back of my mind.

The Court: That isn't the question. You see, you are going over to something else. This invoice shows some sales are made to somebody else. Now, the invoices, I think, will have to speak for themselves. [116]

The Witness: If that is what the invoices are, then it has evidently been delivered. I was referring possibly——

The Court: You weren't asked about anything else, and your answer becomes argument if you begin to go into other things. You will be asked other questions. You have been asked some questions.

Q. (By Mr. Burrell): One of the invoices in Respondent's Exhibit H shows that South Pacific Wholesale Company sold to Luther J. Smith, doing business as Hollywood Cafe, 6916 Santa Monica Boulevard, Los Angeles, May 2, 1944, 30 cases, Rocky Springs blended whiskey. Do you recall whether or not that was handled in your account, whether you arranged for that sale?

A. I think so.

Q. You think that you did?           A. Yes.

Q. Did you, in respect to that sale and no other, receive from Mr. Smith any moneys yourself?

(Testimony of Cyrus Sterns.)

A. No, I didn't in this particular case.

Q. You received no moneys yourself?

A. Because when I came in sometime later then I was told that he had bought some merchandise.

Q. Does that invoice indicate that the invoice was paid directly by Mr. Smith to South Pacific Wholesale Company? [117]

A. I can't answer that. I don't know.

Q. It has a stamp of "Paid." A. Yes.

Q. That is the only indication. Is it your testimony that you personally received no funds, nor any of your agents or employees received any funds from this shipment in respect to Mr. Smith?

A. I did not receive any funds.

Q. The only thing involved in that sale of whiskey is that South Pacific sold it to Mr. Smith and you received the accounting on the 15 per cent mark-up. Would that be it? Is that your testimony?

A. It may be that he gave one of the boys a check to me and I don't recall it.

Q. Would one of the boys have given you the check?

A. He must have, but Mr. Smith did not. I do not remember having——

Q. Why do you say he must have?

A. If he got the merchandise he must have paid for it.

Q. Wouldn't it be sufficient, legally, to pay South Pacific? A. He may have.



(Testimony of Cyrus Sterns.)

Q. And you to have received nothing other than your accounting later from South Pacific?

A. That is correct. As long as he was brought in [118] there by—possibly he did not pay me; may have been paid with a check made out to me.

Q. Well, it is your testimony that you don't know?      A. I don't know.

Q. You might have received some money directly from Mr. Smith?

A. I can't say that I did. I don't remember.

Q. And if Mr. Smith paid the full invoice amount to the South Pacific Company would you have received anything in addition to that yourself?      A. No.

Q. If Mr. Smith had paid any moneys to one of your employees or agents, would they have accounted to you for that?

A. Giving me the OPA price. That is all I was interested in.

Q. I see. I don't believe that earlier we have discussed Mr. John Randolph, had we?

A. I think it is in the same group.

Q. In the invoices, but we hadn't discussed him.

The Court: You asked questions relating to Robert E. McClain and Luther J. Smith.

Mr. Burrell: Yes, your Honor.

Q. (By Mr. Burrell): Mr. Sterns, did you sometime in August or September [119] of 1943 approach Mr. John H. Randolph doing business as Herb Randolph, 6160 Hollywood Boulevard, and offer to sell him whiskey?

(Testimony of Cyrus Sterns.)

A. I didn't approach anybody. They came in to me. I didn't go out——

Q. Did Mr. Randolph approach you for the purchase of whiskey?

A. I can't remember. I had four hundred and some customers. I can't remember every one of them over a period of ten years.

Q. Did you advise Mr. Randolph—do you know of whom I am talking now, John H. Randolph?

A. The name seems to ring. I don't know if I would know him.

Q. Apparently you wouldn't, because he has been sitting in the courtroom all day, except for the last 15 minutes.

A. Then I didn't recognize him.

Q. Referring to the original invoices in Respondent's Exhibit H which are directed to John H. Randolph, which we have stipulated they are for whiskey in your account, do any of these refresh your memory as to your arrangements with Mr. Randolph?      A. No.

Q. Do you have any recollection of receiving money from Mr. Randolph? [120]

A. No, I don't.

Mr. Burrell. I see. I believe that is all at this time, your Honor.

Mr. Reed: One or two more questions, Mr. Sterns.

#### Redirect Examination

Q. (By Mr. Reed): Mr. Sterns, I believe you testified you paid your salesmen a dollar a case for

(Testimony of Cyrus Sterns.)

their sales. What did that amount to over a year? Do you want to look in your return and see how much you claimed?

A. I did most of the selling, I think. I don't know where I could find it.

Q. Maybe I can help you there.

The Court: That's a self-serving matter; doesn't prove anything, actually, to have the witness refresh his collection by looking at the return. At least it is not the best evidence.

Now, did Mr. Sterns keep a record of what he paid salesmen as commissions during the taxable years?

Mr. Reed: Yes, your Honor. We have a record. We will introduce it.

The Court: Where is the record of what he paid salesmen?

Mr. Reed: Mr. Radke's examination disclosed that for the year 1943 Mr. Sterns paid commissions of \$4,650.00 [121] on total sales of \$201,098.98, including his own sales.

The Court: Does the Respondent accept those figures?

Mr. Burrell: I can't at this moment. I don't even know what they are being read from.

The Court: Being read from Exhibit 11 or 12.

Mr. Burrell: Your Honor, may I—I recall that Exhibit 11 or 12 went in without any objection on my part, at which time we were referring to a certain schedule in there; as to all other matters I would certainly want to reserve my right to cross

(Testimony of Cyrus Sterns.)

examine. I am not stipulating to the truth of everything in here, certainly.

The Court: Then I can't receive them in evidence, because there is a lot of material in there, and the Petitioner will rely on those schedules as proof of various matters.

Mr. Reed: I planned to put Mr. Radke on the stand. He went over to South Pacific and worked with Mr. Cummins on Mr. Syracuse's difficulties with the Department.

The Court: It is a very simple matter. The question is, where are the original records of items of this kind? There is a black notebook in evidence. Does that contain a record of commissions paid?

The Witness: No.

Mr. Reed: Probably I can get to this another way, your Honor. [122]

The Court: Where is 11 and 12 that belongs to the Court? Somebody has taken my copy.

You have just given a figure. \$4,650.00 that has been paid to salesmen in one of the taxable years.

Mr. Reed: 1943.

The Court: Where does that appear? Is that an analysis of expenses?

Mr. Reed: Yes, under deductions on page 1.

The Court: I'll have to say that this is all stricken from the record, Mr. Reed, in which at the present you say, "I think I can explain that it is shown in Exhibit 11 that the commissions amounted to \$4,650.00," because I don't know yet how that



(Testimony of Cyrus Sterns.)

figure was arrived at. Respondent doesn't agree, doesn't stipulate that that was an expense.

Mr. Reed: I withdraw that, your Honor. What I am trying to prove is this: I believe it's been entered into evidence that one dollar was the commission, salesman's expense that Mr. Sterns bore, that his gross income is 15 per cent, that the dollar had to be paid out of amount to so little the inference was that he must have had other revenue in order to pay the salesman a dollar.

I am trying to show that the total sales of 14,000 cases of whiskey, of total sales, 1943, amounted to approximately \$200,000.00, and very small sum paid to salesmen. [123]

The Court: Well, one way of getting at that is what percentage of liquor sold for his account was sold by salesmen.

Q. (By Mr. Reed): Mr. Sterns, please answer that. What percentage of the liquor sold for your account was sold by salesmen where you had to pay \$1.00 commission to the salesman?

A. Well, I would have to see.

Q. Approximately. Was it large?

The Court: What would you have to see?

The Witness: I would say 4,000 cases or——

The Court: You say you would have to see something.

The Witness: Get the figures to say whether it was Charlie Mehan, how much he sold; or Mike O'Hara.

The Court: Where are those figures?

(Testimony of Cyrus Sterns.)

The Witness: I have these here.

The Court: That is what I have been inquiring about. Where is the record?

The Witness: Paid your commission, your salesmen.

The Court: You can step down and get it. In which book on those tables, Mr. Sterns, is it?

The Witness: I don't know.

The Court: Is it in some notes?

Mr. Reed: Probably to expedite the matter, please, I withdraw—— [124]

The Court: Just a minute. I don't want to have the record up in the air at certain points. I want to try to get some continuity. Mr. Sterns,——

Mr. Reed: I withdraw the question, your Honor. I will get to that in another manner through Mr. Radke.

The Court: Well, this is very trying for everybody, Mr. Sterns. You see, if you had kept records carefully we wouldn't have to dig into all this.

Mr. Reed: That is all, Mr. Sterns.

The Court: That is all. What does that mean, Mr. Reed, that you can't—step down.

(Witness excused.)

The Court: Does that mean that you can't locate the item?

Mr. Reed: There is a very small amount of such expense claimed as expense, and when Mr. Radke is on the stand——

The Court: That isn't the point. That is a fraud case, isn't it? What was the claim? There was a

question back about what he actually paid agents. Now, do you have evidence on it or not? It isn't a matter of what he claimed on the return, because you know perfectly well, Mr. Reed, that a return is in itself a self-serving document. The whole return has to be questioned.

Now, apart from the return, what evidence do you [125] have of what he paid salesmen?

Mr. Reed: Mr. Sterns, will you take the stand again, please?

The Court: All right.

Whereupon,

### CYRUS STERNS

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was examined and testified as follows:

#### Direct Examination

Mr. Reed: Please mark that as Petitioners' Exhibit for identification.

The Clerk: Exhibit 15 for identification.

(The document above referred to was marked Petitioners' Exhibit No. 15 for identification.)

Q. (By Mr. Reed): Mr. Sterns, I hand you Petitioners' Exhibit for identification No. 15 and ask you what they are, please.

A. Well, commission checks to Joe Hernandez, Harry Lewis. I gave some money to Mr. Sutterman's wife while he was away, and \$200.00 again to Mr. Sutterman.

(Testimony of Cyrus Sterns.)

The Court: You will have to speak louder for the reporter, Mr. Sterns.

Q. (By Mr. Reed): What is the total, Mr. Sterns? [126] A. \$1,050.00.

The Court: \$1,050.00.

Mr. Reed: I offer in evidence Petitioners' Exhibit No. 15.

The Court: Let me see it, please. That is Exhibit 15 for identification. Well, you haven't laid an adequate foundation for that. I wouldn't know what weight to give it now. You just want to offer some checks that have some names and amounts.

Q. (By Mr. Reed): Mr. Sterns, what do these checks represent? This check to Joe Hernandez, what does that represent? A. A commission.

The Court: Who was Joe Hernandez?

The Witness: One of the salesmen.

The Court: I never heard of him before.

Q. (By Mr. Reed): Here is a check to Harry Lewis on December 16, 1943, in the amount of \$500.00. What does that represent?

A. Commissions.

The Court: Who is Harry Lewis?

The Witness: One of the men that was in that San Francisco sale on which I was indicted.

The Court: A man named Harry Lewis?

Mr. Reed: Yes, your Honor. [127]

Q. (By Mr. Reed): The next check, Elsie Sutterman. \$100.00, September 30, 1943.

A. Right. That was when I had Mr. Sutterman go East for me, and I told him that I would take



(Testimony of Cyrus Sterns.)

care of his family while he was gone. I think I paid her about \$200.00 or \$250.00 while he was gone on that mission for me.

Q. The next one is \$50.00, L. C. Sutterman, September 20th. And the last name, October 13, 1943, Elsie Sutterman, \$200.00. Is it your testimony——

The Court: Let him testify and not ask leading questions.

Q. (By Mr. Reed): Just what do these checks represent?

A. Well, I was giving him, or did give him a thousand dollars, plus whatever money I advanced to his wife while he was gone.

The Court: Sutterman?

The Witness: Yes, Mr. Sutterman, your Honor.

The Court: What were you giving him a thousand dollars for?

The Witness: Well, he went back East on a matter to buy a brewery.

The Court: Then the checks to Mr. Sutterman have nothing to do with commissions on sales of liquor handled by South Pacific? [128]

The Witness: He never handled any.

The Court: Take those out.

Mr. Reed: Yes, ma'am.

The Court: Checks to Sutterman come to how much?

Mr. Reed: \$350.00.

The Court: All right. Eliminating those from the other checks would read a total of \$700.00.

(Testimony of Cyrus Sterns.)

Q. (By Mr. Reed): Mr. Sterns, in addition to these check payments, did you make payments by cash to salesman? A. Sometimes I did.

Q. Can you approximate the amounts for 1943 and 1944?

A. I wouldn't—I can't approximate them.

Mr. Reed: That is all.

Mr. Burrell: May I have a question or two in this regard, your Honor?

The Court: Yes.

### Cross Examination

Q. (By Mr. Burrell): May I see those checks, please? We have one check, earlier referred to, \$200.00 paid by you to Joe Hernandez. Will you state again who Joe Hernandez is?

A. He used to sell liquor for me.

Q. Salesman of yours on November 1, 1943?

A. Yes, he was. I would say he was.

Q. \$200.00 in payment of commissions for liquor sales that he had effected for you?

A. That may be his expense——

Q. What do you mean, it may be his——

Mr. Reed: Let him finish it.

The Witness: ——may be his expense to go to Seattle on a whiskey deal. That may have been part of the expense, but I can't identify whether it is for commissions. He had gotten commissions and made sales from time to time for me.

The Court: Well, he can't identify that as commissions so that check goes out for this purpose.

(Testimony of Cyrus Sterns.)

What about the others?

Eliminate \$200.00. That leaves \$500.00 in checks.

Mr. Burrell: I have no cross examination in regard to the others, your Honor.

Mr. Reed: The remaining check is to Harry Lewis. The others have all been eliminated. This check is for \$500.00.

The Court: Who is Harry Lewis?

Mr. Reed: Who is Mr. Lewis?

The Witness: Salesman.

The Court: Salesman?

The Witness: Yes. [130]

The Court: What is the date of that check?

Mr. Reed: December 16, 1943.

The Court: What is the amount?

Mr. Reed: \$500.00.

The Court: What is that payment to Harry Lewis for, Mr. Sterns?

The Witness: Well, he sold liquor for me.

The Court: Well, if you paid him \$500.00 in commission, what would that signify?

The Witness: 500 cases.

The Court: Would you know what kind of whiskey?

The Witness: Well, it would be possibly Rocky Springs or U.D.L.

The Court: What is U.D.L.?

The Witness: United Distillers—Canadian whiskey.

The Court: Then that narrows down the proof to the extent of \$500.00 of commissions paid and I

(Testimony of Cyrus Sterns.)

can receive 15 for identification consisting of that one check, if the others are eliminated. The others are all eliminated?

Mr. Reed: Yes, they are.

The Court: Then that sharpens up your evidence on that specific point. At any rate, we have eliminated the doubtful part of that. When I say we have eliminated it, I mean that the Court must do it during the trial because these records are long and sometimes the cases can't be taken up in Washington for several months for the purpose of preparing the written report in the case. So the Court has to assist itself.

Now, I hope you understand that, Mr. Reed.

Mr. Reed: Yes, I do, your Honor.

The Court: It is a little troublesome to counsel, I know, but the Court has to decide the case and the clearer everything is in the Court's mind, the presumably the decision is right in the end. I am trying to get the facts and the whole proof of the matter. If I allow you or if I just let you go along while I know that there are some doubtful items, then you may think you are doing fairly well with your case, and in the end it turns out that you are not. So you would rather know as you go along, wouldn't you?

Mr. Reed: Yes, indeed.

The Court: All right.

Mr. Reed: Your Honor, I offer this check, payable to Harry Lewis in the amount of \$500.00, dated September 16, 1943, numbered Petitioners' Exhibit No. 15 for identification into evidence.



(Testimony of Cyrus Sterns.)

The Court: 15 is received in evidence.

(The document heretofore marked Petitioners' Exhibit No. 15 was received in evidence.)

Mr. Reed: That is all, Mr. Sterns.

Mr. Burrell: That is all. [132]

The Court: You may be excused.

(Witness excused.)

Mr. Reed: Mr. Sutterman.

The Clerk: Please raise your right hand and be sworn.

Whereupon,

### LEONARD SUTTERMAN

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name and address for the record.

The Witness: Leonard Sutterman.

The Clerk: Please spell it.

The Witness: S-u-t-t-e-r-m-a-n.

The Clerk: Your address?

The Witness: 167 South Canon Drive, Beverly Hills.

### Direct Examination

Q. (By Mr. Reed): Mr. Sutterman, do you know the Petitioner Cy Sterns? A. Yes, sir.

Q. Did you have business transactions with him in 1943? A. I did.

(Testimony of Leonard Sutterman.)

Q. Please state what they were.

A. Well, he commissioned me to go—I had a lead that [133] there was a certain brewery in Flint, Michigan, that was interested in selling a percentage of the brewery, and I told him about it, and he seemed to be interested and wanted me to go down and try to make a deal.

The Court: What kind of a deal?

The Witness: What kind of a deal?

The Court: Yes.

The Witness: Well, the information I had was that the brewery was willing to sell a percentage of their stock, about 25 or 50 per cent of the stock, and with that understanding, if you purchase that amount you would get that many cases, cases of beer shipped to you, and there was an extreme shortage of eastern beer here at that time, and it seemed to be a very attractive deal.

Q. (By Mr. Reed): Did Mr. Sterns provide you with money for this trip?

A. Well, he paid my transportation and paid me a thousand dollars, with the understanding that if the deal was consummated, that I would become a sales manager for the sale of the beer in this territory.

Q. Mr. Sutterman, did Mr. Sterns provide you with a large amount of money to assist in promoting this deal?

A. Well, he wired me the money—originally the head of the brewery wanted I think \$50,000.00, which would give them 25 per cent interest in the brewery, and also supply [134] you with 50,000

(Testimony of Leonard Sutterman.)

cases of beer. Mr. Sterns didn't have the money at the time, and he wired different amounts, amounted to around \$30,000.00—I don't remember, \$30,000.00 or \$40,000.00.

Q. Did the deal go through?

A. No, it didn't.

Q. You brought the money back to Mr. Sterns then?

A. Yes, sir.

Q. How did you bring that back, cash, wire, money order,—

A. Cashier's check, some of the cash returned in cashier's check.

Q. Why did you have some converted to cashier's checks?

A. Well, the money was wired cash through Western Union; instead of carrying it around in cash, I left it in the vault in the hotel, and when I was ready to leave—Mr. Sterns told me how much he wanted in checks and how much in cash.

Q. Did you try to buy some beer for Sterns other than this transaction where he tried to buy an interest in the brewery?

A. Yes. I gave some attorney in Chicago \$5,000.00 to buy some beer, and he wasn't able to consummate the deal, and he returned \$4,750.00 and kept \$250.00 for his legal fee.

Q. Do you know Oscar Ross?

A. Well, I know him through meeting him through Mr. [136] Sterns, at his office.

Q. When did you know him?

(Testimony of Leonard Sutterman.)

A. When I went to Mr. Sterns' office in '43 or '44. I met him there at the office.

Q. Was he there on business? Was he visiting? Or what took place?

A. He seemed friendly, a friendly visit, playing gin rummy, or sitting around the office there.

Q. Who all was there at some specific time when Mr. Ross was there?

A. Oh, I don't remember offhand. I know Mr. Ross, Mr. Sterns and myself were probably sitting in the office; maybe a bookkeeper. I don't remember.

Q. Can you relate any incident to indicate that Mr. Ross thought well of Mr. Sterns?

A. Oh, aside from the fact that they seemed to be very friendly, and on one particular instance, maybe after a gin rummy game, why, Ross was telling me how well he thought of him, said that he liked him like he liked a brother.

Q. Was there ever any discussion of him lending Sterns money?

A. Well, he didn't say so, but I think in one instance when he mentioned the fact how much he cared for him, Mr. Sterns said "He already loaned me some money."

Q. Did he say that in Mr. Ross' presence? [136]

A. While he was there, yes.

Mr. Burrell: I don't mind a reasonable amount of hearsay going in, but I object to any more of that.



(Testimony of Leonard Sutterman.)

The Court: This is hearsay, Mr. Reed. The objection is sustained.

Mr. Reed: Withdraw that.

That is all, Mr. Sutterman.

Mr. Burrell: No cross examination of this witness, your Honor.

The Court: You may step down.

Do you want this witness excused?

Mr. Reed: Yes.

The Court: You are excused, Mr. Sutterman.

The Witness: Thank you, your Honor.

(Witness excused.)

Mr. Reed: Mr. Ross, please.

The Clerk: Please raise your right hand and be sworn.

Whereupon,

OSCAR S. ROSS

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name and address.

The Witness: Oscar S. Ross, 5813 Spring Oak Drive, [137] Los Angeles 27.

Direct Examination

Q. (By Mr. Reed): Mr. Ross, do you know the Petitioner Cy Sterns? A. Yes, I do.

Q. Did you know him in 1943 and 1944?

A. Yes.

Q. 1946? A. Yes.

Q. Did you have any business with him?

(Testimony of Oscar S. Ross.)

A. In a very small way. He was a good friend of mine, and I probably made one or two or three small purchases from him. Outside of that, I would sometimes lend him money.

The Court: Just answer the question you are asked.

What was the question that was asked?

Mr. Reed: Please relate the business that he conducted with Mr. Sterns.

The Court: What is your business, Mr. Ross?

The Witness: I am at the present time in the machine business.

The Court: Did you have a business in 1943?

The Witness: I had some cocktail bars at that time.

The Court: Where?

The Witness: Oh, I had one on Jefferson and Vermont; one on 98th and Vermont; one on West Adams and [138] Normandie. I had one on East First Street. I had several.

The Court: Did you have those during 1944?

The Witness: I think I sold out in '44, all my places.

The Court: I will ask you to reframe your questions. You asked the witness if he had any business with Mr. Sterns. Apparently he doesn't understand what you mean. Will you make it clear what you mean.

Q. (By Mr. Reed): Did you buy whiskey from Mr. Sterns in 1943 or 1944?

(Testimony of Oscar S. Ross.)

A. I probably bought two or three small purchases through him.

Q. The price that was asked you, what was that?

A. Ceiling prices.

Q. Did you ever loan Mr. Sterns money during 1943 or 1944?

A. Yes, I did.

Q. In sizeable amounts?

A. Yes.

Q. Did he repay you?

A. As far as I recollect, he did.

Q. Did you lend him some money in 1946?

A. I can't remember dates. It was a long time ago, and I don't keep track of these things unless I have to. [139]

The Court: What evidence is there, Mr. Reed, of any loans of money by Mr. Ross to Mr. Sterns?

Mr. Reed: We have some canceled checks, your Honor, that are marked "Loan" that are payable to Mr. Ross.

The Court: You haven't produced them, though, in your examination of Mr. Sterns.

Mr. Reed: Your Honor, I had anticipated getting the benefit of that evidence through Mr. Radke, who will qualify as an expert accountant and who has made an examination of all the transactions available of Mr. Sterns and South Pacific and Mr. Ross and various other people he did business with. The checks we have are very voluminous and I felt that I believe that would be proper evidence.

The Court: What the Court had in mind is this: You didn't ask this witness, Mr. Ross, if he had any evidence of his loans to Mr. Sterns.

(Testimony of Oscar S. Ross.)

Mr. Reed: Thank you, your Honor.

Q. (By Mr. Reed): Mr. Ross, do you have any evidence of your loans to Mr. Sterns?

A. No.

Q. Where are your books?

A. I haven't got books from ten years ago.

Q. Why?

A. Wasn't necessary to keep them. I could accumulate [140] nothing but books.

Q. In 1943 and 1944, those were poor years, particularly in the liquor business. Were your books examined by the Revenue Department?

A. Yes. They were examined, I think, in '46 and '47.

Q. Did Mr. Cummins examine them?

A. I don't remember. I had a furniture factory at that time, and I was—I remember somebody spending four days there checking all my transactions. I had several licenses during those years, and my tax examination was all cleared for that period.

The Court: That is all irrelevant. We don't have Mr. Ross' tax liabilities before us in this case.

Mr. Reed: You are right.

The Court: The answer is that you don't have any records of loans made to Mr. Sterns in 1943 and 1944, or prior thereto.

The Witness: No.

The Court: Or afterwards.

The Witness: I think he is referring to one loan in '46 that I made out of my furniture factory, as a personal loan. He was in——



(Testimony of Oscar S. Ross.)

The Court: What loan did you make to Mr. Sterns?

The Witness: In '43 and '44?

The Court: Let me put it this way: How many loans [141] for all times did you ever make to Mr. Sterns?

The Witness: I can't remember.

Mr. Reed: If your Honor please——

The Court: Did you make a good many loans to him? Just a minute, Mr. Reed.

The Witness: I must have made five or six, or even up to ten various loans, that were returned.

The Court: When did you make those loans?

The Witness: During '43 and '44. I am only recollecting that I did that. But the time that I did and the amounts I made them in, I don't remember.

The Court: Think of something that would fix this in your mind. A person comes to you to borrow money, there is something that fixes it in your mind.

The Witness: I would say that during the time I must have known him in the neighborhood——

The Court: I didn't ask you that. I asked you to try to fix something in your mind about the loans.

The Witness: I don't understand the question, your Honor.

The Court: I want you to try to recall the specific loans. It would probably help you to recall them if you could remember why you ever made any loans to Mr. Sterns. Did Mr. Sterns ever come

(Testimony of Oscar S. Ross.)

to you and say that his mother needed to go to the hospital and needed a certain [142] amount of money to send brother to Alaska—that is the way you recollect why you do things.

What would you be able to recall as the reason you would have loaned Mr. Sterns any money; and that will help you recall when you did it and what you did.

The Witness: Mr. Sterns was a friend of mine, and he has gone into the liquor business and he comes to me and says he has an opportunity of buying certain amounts of liquor, would I lend him any money, and I did. After the first loan he repaid it, and I would lend him money at a different time.

The Court: That ought to help you refresh your recollection about how much you would loan him at one time.

The Witness: Well, there is——

The Court: Now, we are examining you, Mr. Ross. Petitioner called you as a witness, and I want to find out how much your testimony is worth. It is a very——

The Witness: Is it over-all, how much over-all or specific amounts or specific dates?

The Court: We want to know about specific loans.

The Witness: I don't remember those; outside of one.

The Court: Don't you recall whether on the occasion of any time when you made a loan to him it was ten cents?

(Testimony of Oscar S. Ross.)

The Witness: I only remember one loan, because it [143] was called to my attention, \$5,000.00.

The Court: How was it called to your attention?

The Witness: Mr. Reed showed me a photostatic copy of some money that I wired through Western Union to Mr. Sterns' account.

The Court: What is it, a photostatic copy of a telegram?

The Witness: Evidently a receipt from Western Union.

The Court: Aside from that, you can't remember specifically any loans to Mr. Sterns?

The Witness: No, I don't.

The Court: And you can only remember this other one because you have been shown a telegram?

The Witness: That is correct.

The Court: And does that telegram have your name on it?

The Witness: Yes, has my signature.

The Court: All right. I suggest that if you have been following this, Mr. Reed, I suggest that you produce the telegram to which this witness has referred. He says it has his signature on it.

Mr. Reed: I believe that is already in evidence, in conjunction with the Havana, Cuba matter this morning.

The Court: I have an exhibit——

The Clerk: That is Exhibit 7. [144]

The Court: Will you get the Court's copy, please?

The Clerk: Here it is. I have it.

(Testimony of Oscar S. Ross.)

The Court: We have in evidence Exhibit 7 and you have referred to it, Mr. Ross. What is there in Exhibit 7 which refreshes your recollection?

The Witness: I don't remember the—I don't remember anything about that outside the fact that I see my signature on here. It was received from me, money that was evidently wired to Mr. Sterns.

The Court: You mean you wouldn't testify under oath that you sent Mr. Sterns \$5,000.00?

The Witness: Yes, I said I did. This shows it.

The Court: Well, your testimony isn't to that effect. You say you don't remember anything about it, except you see your signature.

The Witness: I mean, I can't remember from memory the exact amount and the dates.

The Court: Is that your handwriting on the bottom part of this photostat?

The Witness: No.

The Court: Now, did you or did you not send, "Pay over \$5,000.00 to Western Union to be sent to Mr. Sterns at the St. Francis Hotel, San Francisco," on March 21, 1944; if you will read that? That is what it says?

The Witness: Yes, I sent money to Mr. Sterns [145] through Western Union.

The Court: How much did you send?

The Witness: \$5,000.00.

The Court: All right.

Mr. Reed: If your Honor please, Mr. Burrell has just informed me that they are willing to stipulate that loans were made by Mr. Ross. I believe



(Testimony of Oscar S. Ross.)

their information comes from an investigation of Mr. Ross' books.

The Court: I don't know what to do about this. We have a witness on the stand, and when we get finished with this witness we will go on to something else. Again, we will take up one thing at a time.

Have you any further questions to ask this witness?

Mr. Reed: May I offer——

The Court: I have asked you, Mr. Reed,——

Mr. Reed: I want to ask him if——

The Court: You are not—we tell witnesses to be responsive to questions. You are not responsive to the Court's question. The checks you have in your hand were not made out by this witness. Now, this isn't the proper time to offer them.

Mr. Reed, have you any other questions to ask this witness?

Q. (By Mr. Reed): Do you know whether or not Mr. Sterns failed in the [146] liquor business in 1944?      A. No, I don't.

Mr. Reed: That is all.

The Court: Any questions, Mr. Burrell?

Mr. Burrell: Just for clarification.

### Cross Examination

Q. (By Mr. Burrell): Mr. Ross, I understood you to testify a few minutes ago that during the years 1943 and 1944 you had made five, six, up to

(Testimony of Oscar S. Ross.)

ten loans to Mr. Sterns which were returned. Is that correct?      A. Yes.

Q. When you say "which were returned," you mean he repaid them?

A. I am assuming they are repaid because I don't recollect him owing me anything.

Q. You also assume they are repaid or were repaid sometime in the years 1943 and 1944?

A. Yes.

Mr. Burrell: That is all, your Honor.

The Court: Thank you, Mr. Ross. I am sorry you had to wait so long.

Do you want to have this witness excused?

Mr. Reed: I would like to have him wait just one moment, your Honor. [147]

The Court: All right. You can sit down at the counsel table.

(Witness excused.)

Mr. Reed: Mr. Burrell offered to stipulate that certain loans had been made from Mr. Ross to Mr. Sterns. I would appreciate it very much if those amounts—you would give me those amounts.

Mr. Burrell: Yes. I am willing to stipulate, although I confess I would like to know for what purpose in the record——

Mr. Reed: The reason is, I believe it is Respondent's theory of the case that Mr. Sterns received large sums of money, unaccounted for, and actually any loans that he received from friends would not be income, and such evidence would be very helpful to the Petitioner. Mr. Ross has lost his books. That

is, he doesn't have them in his possession. We served him with a subpoena. We have these canceled checks from Mr. Sterns to Mr. Ross, apparently purporting to be——

Mr. Burrell: I will make this statement: Our agent is going to stipulate, and I am going to stipulate that we have not placed in our reconstruction of income of this Petitioner any of these loans that are involved in this testimony. However, if your Honor thinks it will be of help to the record, I will stipulate.

The Court: That probably would be helpful, yes, [148] Mr. Burrell.

Mr. Burrell: I offer to stipulate from our own records that on 9-21-43, Mr. Ross loaned to Mr. Sterns the sum of \$2,400.00, which sum was repaid on 5-10-44; that on 10-27-43 he loaned to Mr. Sterns the amount of \$5,500.00, which loan was repaid on 1-3-44; that on 11-23-43 he loaned the sum of \$8,000.00 to Mr. Sterns, which loan was repaid on 12-3-43; that on 4-6-44 he loaned to Mr. Sterns the sum of \$7,500.00, which was repaid as follows: On 4-14-44 the sum of \$3,500.00, and on 4-21-44 the sum of \$4,000.00.

We do not have in our possession the records involving this other, I believe \$5,000.00 which was mentioned.

Mr. Reed: Yes.

Mr. Burrell: I offer that stipulation.

Mr. Reed: Yes.

The Court: Will you accept the statement?

Mr. Reed: Yes, we accept that.

The Court: What are these checks that you have been interested in?

Mr. Reed: These checks, your Honor, are endorsed by Oscar Ross, apparently signed by Cy Sterns.

The Court: Do the amounts correspond with any of these?

Mr. Reed: Some of them do. I have one here, December 3, 1943, payable to Oscar Ross, signed by Cy Sterns, [149] payment of \$8,000.00.

Mr. Burrell: That is one that I read, your Honor.

Mr. Reed: December 31, 1943, \$5,500.00; September 25, 1944, \$950.00; April 24, 1944, \$2,000.00; April 11, 1944, \$3,500.00. That is all.

The Court: You are not going to offer the checks, is that right?

Mr. Reed: Yes. Thank you, your Honor.

The Court: Well, I don't know. I am confused now about this. And you see what the situation is. The checks support some of the items to which a stipulation has been entered into. They don't support every item.

Then the question comes up, well, what other payments to Mr. Ross. It muddies up the water.

Mr. Burrell: As a matter of fact, as there is no tie-in here of these other checks, I feel that I would have to at least object to them, without some kind of foundation, tie-in, being made for them.

The Court: Let me see the checks, please.

These are offered, as I understand, to prove repayment of loans? And I can't accept them now as



proof of repayments of loans because we have nothing that constitutes a foundation for the checks. Perhaps we will have to let it stand on the stipulation.

Have you another witness you want to call? [150]

Mr. Reed: May I put Mr. Sterns on again, your Honor?

The Court: I would rather do that tomorrow, if there is a possibility you can get through with the testimony of another witness. You have another witness here.

Mr. Burrell: May I interject something? Mr. Syracuse, who has been subpoenaed by the Respondent, who is the proprietor of the South Pacific Wholesale Company, or was during the years involved, stepped up and says he believes it rather impossible for him to appear tomorrow, and I wonder if he could appear at this time.

The Court: Take it out of order?

Mr. Burrell: Yes.

Mr. Syracuse: I postponed an appointment today and thought it would be possible that I would get called on today, and I made it for tomorrow.

Mr. Burrell: I would estimate his testimony on direct examination would probably be 15 minutes. It is difficult for me to say accurately.

The Court: Now, do you want Mr. Ross to stay any longer?

Mr. Reed: No.

The Court: You are excused, Mr. Ross.

You have another witness?

Mr. Reed: Yes, I have. I believe he would be [151] willing——

The Court: Here at the counsel table?

Mr. Reed: Yes.

The Court: Could we have him here tomorrow?

Mr. Reed: Yes, your Honor.

The Court: Then I suggest that you wait until tomorrow also, to take up the matter of those checks, and the loans. If you wanted those checks marked for identification, have them marked at this time, and then go back to that tomorrow.

The Clerk: 16 for identification.

(The documents above referred to were marked Petitioners' Exhibit No. 16 for identification.)

The Court: They will all be marked as one exhibit, 16 for identification.

We will take a short recess.

(Short recess taken.)

The Court: I believe that it would be better now if you ask Mr. Sterns to take the stand for a minute to explain these checks, and that will be at once place in the record, and we will be finished with that.

Mr. Burrell: Before Mr. Syracuse comes to the stand, I would like to make a brief statement. We have had a change of plans.

The Court: All right. All right, Mr. Sterns. That [152] was 16 for identification, checks to Mr. Ross, I believe.

Mr. Reed: Yes, your Honor.

Mr. Burrell: Well, your Honor, Petitioners' Exhibit No. 16 consists of five canceled checks all

drawn by Mr. Sterns payable, and all payable to Oscar Ross. Respondent is willing, from its own records, to stipulate that all of these checks are in repayment of loans to Mr. Ross, with the exception of Check No. 339, dated September 25, 1944, in the amount of \$950.00. And in regard to that check, we have no record to show its nature.

Whereupon,

CYRUS STERNS

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Reed): Mr. Sterns, I show you this check and ask you what it was for, and the date and who it was payable to. Just the top one, Mr. Sterns.

A. Well, he evidently had loaned me this. I would pay off the loan, borrow and pay off, and then if I needed it again I knew I could always go to him and get it. However, there are a lot of cash payments out of—my book will show that I had refunded to Mr. Ross—a lot of times he brought [153] cash in to me.

Q. This check then is in payment to the loan you received from Mr. Ross?

A. There isn't any question about it.

Q. This \$950.00 check? A. Yes.

Mr. Reed: I offer this as Petitioners' Exhibit 16 for identification in evidence, the check in the amount of \$950.00, dated September 25, 1944, payable to Oscar Ross and signed by Cy Sterns.

The Court: Mr. Syracuse, will you come forward?

The Clerk: Please raise your right hand and be sworn. [156]

Whereupon,

EDWARD ANTHONY SYRACUSE

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Please state your name, Mr. Witness, and your address, for the record.

The Witness: Edward Anthony Syracuse, S-y-r-a-c-u-s-e; 555 North Bronson, Los Angeles 4.

Direct Examination

Q. (By Mr. Reed): Mr. Syracuse, in 1943, what was your business?

A. I was engaged in the liquor business and wine business.

Q. Under your own name?

A. The South Pacific Wholesale Company, I owned *a loan*. The Garvey Winery, which I was president and general manager of, and 50 per cent stockholder, and I was also managing director of that Garvey Winery on Garvey Boulevard, Garvey, California.

Q. In 1943 I believe you entered a business arrangement with Cy Sterns. Will you describe that, please?

A. Mr. Sterns came to the office of South Pa-



(Testimony of Edward Anthony Syracuse.)

cific stating that he was waiting for a basic permit; that he had sources of procuring a certain amount of whiskey—didn't [157] specify the amount; that he also had made pledges to various customers and if I would take it in, and what I could do. We entered into an agreement, also financing it, that for financing, billing and delivering, best that I could do was \$2.00 a case. He agreed, and we proceeded from there on. The difference between the \$2.00 a case and the 15 per cent mark-up—

The Court: Just a minute, please. Were you asked anything about that yet?

The Witness: No ma'am.

The Court: Ask your next question.

Mr. Reed: What was the arrangement as to how Mr. Sterns and you divided the profits and expenses in conjunction with the sale of the liquor that he procured for you?

The Court: What do you mean by that question? What profit are you talking about, Mr. Reed?

Mr. Reed: The 15 per cent mark-up and the—

The Court: Let's stay away from leading questions. He testified that he was going to charge \$2.00 for handling.

Mr. Burrell: There is an agreement in evidence, one of the Petitioners' exhibits, between Mr. Sterns and South Pacific, setting forth the entire agreement.

The Court: What agreement?

Mr. Burrell: One of Petitioners' exhibits introduced this morning. [158]

(Testimony of Edward Anthony Syracuse.)

Mr. Reed: Here it is, your Honor.

Mr. Burrell: That would be the best evidence of their arrangement.

The Court: Exhibit 6 is the best evidence of the agreement between Mr. Sterns and South Pacific, and it is a rule of evidence that where you have a written agreement, that that is the best evidence. Now, do you know of any reason why you should go outside this written agreement?

Mr. Reed: No, your Honor.

Q. (By Mr. Reed): Was the agreement carried out? A. Yes.

Q. In 1943 were you familiar with the different qualities of whiskey? A. Yes.

Q. Are you acquainted with the quality and the popularity of the brands of whiskey that Cy Sterns was concerned with, Rocky Springs and U. D. L., and I believe one or two others that I believe you handled for him? A. Yes.

Q. Were they high quality whiskeys?

A. They were not nationally advertised brands, none of them were.

Q. Is it reasonable to believe that those particular brands of whiskey could have brought a premium price, or substantially [159] over ceiling price?

Mr. Burrell: I am not sure that the witness is qualified, in the present state of the record, to answer that question. I will object to it.

The Court: Objection sustained.

Q. (By Mr. Reed): When these invoices went

(Testimony of Edward Anthony Syracuse.)

out from your place of business, did you make any effort to protect yourself, or to assure yourself that the whiskey was not being sold at over ceiling prices?

A. The price was on the invoice. May I explain, your Honor, that due to the fact that the large amount of money was borrowed from the bank to pay for the bill of lading that came, before we could receive the whiskey, I made a rule that all whiskey that went out was C. O. D. unless if Mr. Sterns wanted an invoice to go prepaid, he would have to pay the amount of the invoice. And I believe that most of the invoices carry a stamp, very clearly, that if anyone asked other than the prices prevailing on the invoices, to notify the office, not to pay any more. It is a form that a lot of liquor people used.

The Court: All right.

Q. (By Mr. Reed): Would over ceiling sales by Cy Sterns be likely to involve you? [160]

A. They could have. Not necessarily. I mean, he had his own business.

Q. Did you ask any of Mr. Sterns' customers if they paid over ceiling?

A. I had a number of occasions to meet some of Mr. Sterns' customers and asked them pointblank if Mr. Sterns had asked over-the-ceiling price, and they said no, never.

Q. Can you recall any specific comment made by any one of those customers, the words he used?

(Testimony of Edward Anthony Syracuse.)

Mr. Burrell: I will object to it as hearsay, your Honor.

The Court: Objection sustained.

Q. (By Mr. Reed): Did you ever deliver direct to Sterns' customers yourself? A. No.

Q. Did any of his customers come to your store and take delivery and make payment there?

A. Yes. They either came to the warehouse, or they went to a public warehouse where a large percentage of the whiskey was stored there for collateral to the bank. We borrowed from the bank. It went in bond, and in order for us to release that whiskey, 100 cases or 200 cases, we had to get a release from the bank first so that the warehouse in turn would release that whiskey. [161]

Q. Did you ever personally collect the payment for this whiskey from the customers?

A. Not personally, no. The office—a lot of customers could have come there and picked up ten cases of whiskey and 25 cases of whiskey, and paid the office. I was not at South Pacific too much, probably about an average of six or seven hours a week, maybe two hours or three hours one day. I spent most of my time at the winery. I had a manager at South Pacific.

Q. Could you approximate the amount of business that was transacted in your office where payments were made direct to your office by Sterns' customers? A. No, I couldn't approximate it.

Q. Was it a substantial sum?

A. All invoices, every case that went out of the



(Testimony of Edward Anthony Syracuse.)

office, either the customers paid for it or Sterns paid for it; no open accounts. They were all C. O. D.

Q. Did Sterns have an office away from your office?

A. He did. He was on Santa Monica Boulevard when the arrangement was first made. Later on a vacancy happened next to my office on Beverly Boulevard and he rented that.

Q. Did he have expenses, to your personal knowledge, outside of what was accounted for through your books, such as salesmen commissions and rent?

A. Whatever expenses he had, they were his. I had [162] nothing to do with it. I didn't pay no salesmen, didn't pay anybody.

Q. Did you ever observe Sterns in possession of substantial amounts of cash? Did he carry a big roll?

A. Yes, he did.

Q. Did you ever observe him paying out sums of cash to anybody, or receiving large sums of cash, not in checks?

A. Several times. I mean, if a car of whiskey amounted to \$50,000.00 we'll just say as a matter of figuring, and a draft was there to be paid, rather than borrow the entire amount from the bank, Mr. Sterns could have paid probably \$20,000.00 and the balance was borrowed from the bank. So he had—it was customary in those days—it seemed that all these tavern owners and liquor stores, they had a lot of cash.

Q. Did you ever incur a loss because of liquor condemned by the authorities?

(Testimony of Edward Anthony Syracuse.)

A. Other than a freight loss? I got a couple of cars of whiskey that were quarantined, the Health Department said they were not fit for human consumption, and we didn't unload the whiskey; returned it to the shipper, and I was not able to collect the freight. I didn't pick up the draft.

Q. Do you know if Mr. Sterns had such a loss?

A. I believe he had one car of whiskey that went back. I am not sure.

Q. Did you ever offer Sterns a job to go to work for [163] you?

A. Yes. In 1944, latter part of '44, Mr. Sterns claimed that he was broke, financially, and ill, and I asked him if he wanted to go out and sell wine. He said he was not physically fit to do so.

Q. Did you, during the course of 1943 and 1944, in your relationship with Sterns, did you ever see him engaging in any high living or playing the ponies or otherwise disposing of money, other than in business?

A. No, I didn't. All the business was during the working day, and we went to lunch, and I paid for the lunch one day and—whether it amounted to \$2.25—and the next time he probably picked up the check. We had no social life, I mean in the evening.

Q. Did he live modestly, to your personal knowledge?

A. I believe he did.

Mr. Reed: That is all.

Mr. Burrell: No cross examination of this witness, your Honor.

(Testimony of Edward Anthony Syracuse.)

The Court: Thank you. May this witness be excused?

Mr. Reed: Yes, your Honor.

The Court: You are excused.

(Witness excused.)

Mr. Burrell: Your Honor, it is agreeable with [164] counsel that we recess until tomorrow, if that is the Court's pleasure. It is now 5:10.

The Court: This is a good time to recess; and then you will present the rest of your case tomorrow morning?

Mr. Reed: Yes, your Honor.

The Court: We will recess until 9:30. We will start reasonably promptly tomorrow. I don't think I will have to keep you waiting tomorrow morning.

(Whereupon, at 5:10 o'clock p.m., an adjournment was taken until 9:30 o'clock a.m., Wednesday, October 22, 1953.) [165]

The Clerk: Dockets 37940 and 41, Ruth Sterns and Cy Sterns.

The Court: Proceed with the case on trial.

Mr. Reed: Mr. Radke, will you please take the stand?

Whereupon,

**RAY RADKE**

called as a witness for and on behalf of the Petitioners, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please. State your name and address for the record.

(Testimony of Ray Radke.)

The Witness: Ray Radke. 3127 Castle Heights Avenue, Los Angeles 34.

The Court: Proceed, please.

Direct Examination

Q. (By Mr. Reed): Mr. Radke, what is your profession?      A. Public Accountant.

Q. How many years' experience have you had as a public accountant?

A. Approximately 20 years.

Q. Please describe the nature of your work.

A. General accounting practice and tax service, such [168] as maintaining the complete sets of books, furnishing monthly profit and loss statements, handling all tax matters.

Q. What is your age?      A. 47.

Q. Do you devote your full time to that profession?      A. I do.

Q. Who is John Radke?      A. My father.

Q. Was he in the same practice?

A. That is right.

Q. Did you succeed to his practice?

A. I did.

Q. Mr. Radke, I show you Respondent's Exhibit I and ask you if you have ever seen that before?

A. Yes, I have.

Q. What is it?

The books of the South Pacific Wholesale Company.

Q. Have you made a careful examination of that book?      A. Yes.



(Testimony of Ray Radke.)

Q. I show you Respondent's Exhibits J, K, L and M. Are you familiar with these?

A. Yes.

Q. What are these?

A. Those are the office copies of their invoices, of the South Pacific Wholesale Company. [169]

Q. Did you engage in an examination of those records on behalf of the South Pacific Company when an investigation of those records was being made by the Bureau of Internal Revenue?

A. Yes, I did.

Q. The Petitioner in this business, Cyrus Sterns—I believe you heard the testimony—had a business arrangement with the South Pacific Wholesale Company? A. That is correct.

Q. I hand you Petitioners' Exhibits Nos. 11 and 12 and ask you if you are familiar with those.

A. Yes.

Q. Did you prepare them?

A. I helped prepare them.

Q. Were they prepared under your supervision?

A. They were.

Q. What do they purport to show?

A. Mr. Sterns' transactions as per the contract or agreement he had with the South Pacific Wholesale Company, and, in addition, items of income and expense furnished by Mr. Sterns, that were additional items of income and expense that were not reflected in the books of South Pacific.

Q. Did you endeavor in that investigation to arrive at Mr. Sterns' gross income and net income,

(Testimony of Ray Radke.)

such as a person employed to prepare his tax returns would do? [170]

A. Yes; that is the theory I used.

Q. For the year 1943, please turn to page 1 of Exhibit 11, the gross sales in the amount of \$201,098.96. In your opinion is that a proper recording of the sales that Mr. Sterns had?

A. To the best of my knowledge it is.

Q. The cost of goods sold, less inventory, at the end of the period of '43 leaves gross income of \$34,976.15. Is that a proper recording of his gross income for income tax purposes?

A. That was computed from all records available. In my opinion it is a proper amount.

Q. Further down, under deductions, there is a total deduction of \$37,595.88.

Mr. Burrell: If your Honor please, excuse me just a moment. This has not been offered in evidence, so I haven't had an opportunity to object to it as being offered as such.

Mr. Radke has testified there are in these exhibits items of income and expense which are taken not from these records——

The Court: This is Exhibit 11 which was received in evidence yesterday.

Mr. Burrell: Your Honor may recall it was later stricken except for the portion in the later part.

The Court: No, it wasn't stricken. I asked you [171] what you meant in objecting to something that was inquired into yesterday about commissions. Now, I am quite sure this exhibit hasn't been

(Testimony of Ray Radke.)

stricken. You should have objected to the receipt in evidence of the document.

Mr. Burrell: I think my objection will be on the record, as to all portions other than the part we were referring to when it was put in, your Honor.

The Court: I am sorry, I will have to differ with you, because I would not have received the document in evidence if you had made that objection.

Mr. Burrell: At this time I will object to Mr. Radke testifying to items of income and expense which are not taken from records he examined, and which are furnished to him by Mr. Sterns, which is in no form before the Court.

The Court: Your objection is well taken.

Mr. Reed, you can't meet your burden of proof by submitting only a typewritten recapitulation of material that involves conclusions as to facts.

Mr. Reed: Yes, your Honor.

The Court: Yesterday Exhibit 11 was offered. And with it Exhibit 10 relating—I guess it is Exhibit 12, relating to 1944.

We also received two supporting exhibits, 13 and 14, invoices of the South Pacific Company, which supported schedules which appear at the back of these two exhibits, [172] 11 and 12.

Now, we will have to clarify the status of these exhibits now. You have a copy of the Exhibit 11, do you, Mr. Reed?

Mr. Reed: Yes, before me, your Honor.

The Court: Mr. Burrell, you have a copy of Exhibit 11?

(Testimony of Ray Radke.)

Mr. Burrell: Yes.

The Court: I asked you to number the pages of these exhibits yesterday. At what point, Mr. Burrell, do the tabulations in Exhibit 11 represent a summary of the invoices which are in evidence as 13 and 14?

Mr. Burrell: In Petitioners' Exhibit 11, commencing at page 14, continuing to page 15, is the recapitulation of, I believe, the original invoices which are referred to in the other exhibits.

The Court: As I understand, you have no objection to the figures set forth on pages 14 through 18 of Exhibit 11, is that correct?

Mr. Burrell: 14 and 15, your Honor. And page 16 is agreeable. Page 17 is a different matter and it is not agreeable to the Respondent.

We will stipulate then to the accuracy and admissibility of pages 14, 15 and 16.

The Court: But not 17 and 18? [173]

Mr. Burrell: No, your Honor.

Mr. Reed: I believe with Mr. Radke's help, your Honor,——

The Witness: Thank you, Reed. I know you will straighten this out the best way you can in few minutes. But I am not quite ready yet.

Now, with respect to Exhibit 12, what is your objection to that exhibit, Mr. Burrell?

Mr. Burrell: May I put it this way, your Honor: We will stipulate to the accuracy of the recapitulation appearing on page thereof as being a summary



(Testimony of Ray Radke.)  
of the original invoices already introduced in evidence. But to nothing more in that exhibit.

The Court: That is all?

Mr. Burrell: That is all, your Honor.

The Court: Then I will ask the Clerk to stamp on page 9 of Exhibit 12 for identification, and receive in evidence page 9. The rest is for the present excluded from evidence. The whole exhibit is marked as one for identification.

The Clerk: What will this be marked, your Honor?

The Court: Page 9 will be stamped Exhibit 12; instead of the whole document being the exhibit that one page is Exhibit 12. Do you understand?

The Clerk: Yes. [174]

The Court: In Exhibit 11 for identification, pages 14, 15 and 16 will be Exhibit 11. Mr. Baird, stamp each of those pages 14, 15 and 16 Exhibit 11. Then the rest of Exhibit 11 for identification has to be proved.

Mr. Burrell: Your Honor please, I have no desire to make this difficult.

The Court: That is the only thing I can do under the circumstances, and to save the record. We will go ahead. You can work out anything else you want during the recess.

Proceed, Mr. Reed.

Mr. Reed: I was going to suggest a short recess to give Mr. Radke an opportunity to help me get the documentary supporting evidence for this, so we can present it.

(Testimony of Ray Radke.)

The Court: You do that now. Anything you can agree to that is important, go ahead and agree to it.

Mr. Reed: Mr. Radke, will you step down?

(Short recess taken.)

The Court: Have you accomplished something during the recess on this matter of checking back on supporting records?

Mr. Reed: I am very sorry, your Honor. We seem to be left in somewhat of a state of confusion. It appears that the miscellaneous checks we have for expenses outside the business are not all acceptable to Respondent.

The return shows approximately \$7,000.00 of [175] expenses claimed by Mr. Sterns that would be expenses incurred outside of the South Pacific matters, and I believe the record shows he had certain additional losses for 1944 that were not included in deductions in his 1944 return, so presently I believe that I should rest my case.

The Court: You should rest?

Mr. Reed: Yes.

The Court: And have Respondent go ahead with what he has?

Mr. Reed: Yes. I believe the state of the record will show the returns filed by the Petitioner were substantially correct. Other losses that have been testified to would further reduce the income as shown in those returns, such as the \$20,020.00, and so forth.

The Court: What are you going to do about the balance of Exhibits 11 and 12 that have been left

(Testimony of Ray Radke.)

in the status of marked for identification only?

Mr. Reed: I would withdraw those.

The Court: You would just rely on the return as it has been made up?

Mr. Reed: Yes.

The Court: Does your accountant have anything to suggest?

Mr. Reed: Mr. Radke, could you suggest something?

The Witness: I think that is as fair to one as it [176] is to the other; very equitable, your Honor.

Mr. Reed: Do you have any suggestion, Mr. Burrell, other than what I have said?

Mr. Burrell: I have no suggestion to make. It is your case, Mr. Reed.

The Court: Well, originally you intended calling Mr. Radke.

Mr. Reed: Yes, and——

The Court: Anyone else?

Mr. Reed: No,—originally I had Mr. Ross. He has already testified. I have no other witnesses.

The Court: No other witnesses except Mr. Radke?

Mr. Reed: That is right, your Honor. I would like to, before the hearing closes, put Mr. Sterns back on the stand for one or two questions.

The Court: Do you want to ask him those questions now?

Mr. Reed: All right.

The Court: All right.

Mr. Reed: Mr. Sterns, will you take the stand?

(Testimony of Ray Radke.)

The Court: Let the record show for the present there are no other questions to be asked Mr. Radke.

(Witness excused.) [177]

Whereupon,

### CYRUS STERNS

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was examined and testified further as follows:

#### Direct Examination

Q. (By Mr. Reed): Mr. Sterns, I believe you previously testified that you borrowed money from Oscar Ross. How much did you owe him on December 31, 1944? A. About \$32,000.00.

Q. Do you still owe him? A. Yes, I do.

Q. Approximately how much?

A. About \$32,000.00—\$33,000.00.

Mr. Reed: That is all.

The Court: Do you want to ask Mr. Sterns any questions about this?

#### Cross Examination

Q. (By Mr. Burrell): I understand you just now testified at the end of '44 you owed Mr. Ross the sum of \$32,000.00? A. \$33,000.00.

Q. Did you hear Mr. Ross' testimony yesterday?

A. I did. [178]

Q. He testified that of all the moneys he loaned you in '43 and '44 you repaid them in those years?

A. I heard him testify that. The man is a very



(Testimony of Cyrus Sterns.)

wealthy man and \$32,000.00 to him doesn't mean anything.

Q. It is your testimony now he was not testifying correctly?

A. He may have overlooked it. I am not going to say he deliberately testified falsely.

Q. Do you have records here in court to prove the \$32,000.00 to which you are now testifying?

A. I do not.

Mr. Burrell: That is all, your Honor.

The Court: Mr. Sterns, did you give Mr. Ross a note or notes?

The Witness: Your Honor, this was all done in more or less in confidence——

The Court: I assume you didn't give any notes?

The Witness: No, your Honor. In fact, in '46 he loaned me a thousand dollars which we have a copy of the stub of the check.

The Court: That is all. You may step down.

(Witness excused.)

The Court: You may proceed, Mr. Burrell, with Respondent's case.

Mr. Burrell: I would like to call to the witness stand at this time Luther J. Smith.

Whereupon,

### LUTHER J. SMITH

called as a witness for and on behalf of the Respondent. have been first duly sworn, was examined and testified as follows:

(Testimony of Luther J. Smith.)

The Clerk: Please be seated. Please give your name and your address for the record.

The Witness: Luther J. Smith. 918 South Hudson Avenue, Los Angeles 38.

### Direct Examination

Q. (By Mr. Burrell): Mr. Smith, are you appearing here in response to a subpoena?

A. I am.

Q. Where were you located and in what business in the years 1943 and 1944?

A. In 1943 I owned the DeAnza Cafe. I believe the address was 678 South Alvarado.

Q. In Los Angeles? A. In Los Angeles.

Q. In 1944 did you have any other location or business?

A. In 1944, it was in the 6900 block on Santa Monica Boulevard, Los Angeles.

Q. What was the name of your business at that location? [180] A. The Hollywood Cafe.

Q. Are those the only two businesses which you had during those years? Did you have any other business?

A. No, that is all. That is all.

Q. In the course of your operation of the DeAnza Cafe, did you contact or were you contacted by the Petitioner Mr. Sterns or any of his representatives?

A. I was contacted by his representative.

Q. What happened at that time?

The Court: Now, by whom were you contacted?

(Testimony of Luther J. Smith.)

You were contacted by representatives. Can you be more specific on that?

Q. (By Mr. Burrell): Can you remember the name of the person who contacted you?

A. No, not at this moment.

Q. Did you know he was a representative at that time of Mr. Sterns?

A. I knew he was a representative of a liquor company.

Q. Did you know of what liquor company?

A. At that time I did not.

Q. What transaction at that time happened between you and this person?

A. Well, this person, we were talking about the liquor being shortage, and he told me he could get me, I [181] believe it was 50 cases of whiskey.

Q. Did you pay him any money? A. Yes.

Q. How much?

A. Well, I believe it was between fourteen and sixteen hundred dollars.

Q. How did you pay it to him?

A. In cash.

Q. Did you get a receipt? A. No.

Q. What did you do thereafter in respect of that transaction?

A. Well, it was quite a while and I didn't receive any whiskey, so in the meantime I sold the DeAnza and that was in November of '43. And then I got in contact with this man that I gave the money to——

(Testimony of Luther J. Smith.)

The Court: How could you get in contact with him if you didn't know his name?

The Witness: He stayed at the bowling alley, more or less, on the corner of Eighth and Alvarado.

The Court: What did you call him, Dick or Joe?

The Witness: That I don't remember.

The Court: You called him something, didn't you?

The Witness: Yes, but I don't remember.

The Court: Go ahead. [182]

Q. (By Mr. Burrell): You did contact the identical person with whom you dealt earlier?

A. That is right.

Q. Then what happened?

A. And he gave me Mr. Sterns' address out on Santa Monica Boulevard. I believe it was about the 8600 block.

Q. What did you do?

A. Well, I went there several times.

Q. To Mr. Sterns' address?

A. To Mr. Sterns'.

Q. Did you see Mr. Sterns? A. Yes.

Q. Did you talk with him? A. Yes.

Q. What happened in you discussions with Mr. Sterns?

A. Well, he says, "Now, you haven't got a license now."

And I says, "Well, I will be getting a license in a few months."

So along in March, I believe it was March of '44



(Testimony of Luther J. Smith.)

is when I took over the Hollywood Cafe, in the 6900 block on Santa Monica Boulevard, and I went to see Mr. Sterns several times. Whiskey was getting shortage, and one day——

Q. What was the connection, Mr. Smith, between this fourteen to sixteen hundred dollars cash you gave this [183] unidentified person and Mr. Sterns with whom you later had discussions?

A. Repeat that, please.

Q. What is the connection between this unidentified person, with whom you had your first contact, and Mr. Sterns with whom your later discussions occurred, in regard to whiskey? What is the connection between them?

A. This man, I guess, was working for Mr. Sterns.

Q. How do you gather that?

A. Well, I was told that.

Q. Did you discuss with Mr. Sterns this fourteen to sixteen hundred dollars cash you had put up with this unidentified person?

A. Yes.

Q. What did Mr. Sterns say?

A. He had me on his list, that I had given this man money.

Q. He acknowledged you had paid this amount of money and he had it on a list of his?

A. I don't know how much Mr. Sterns had on his list.

Q. Did he represent to you that he owed a duty to you to deliver some whiskey?

A. That is right.

(Testimony of Luther J. Smith.)

Q. He acknowledged his obligation to you for delivery of whiskey? [184]

A. That is right.

Q. In respect to that cash you had paid to this unidentified person? A. That is right.

Q. Go ahead. What happened? Taking it up where you are now having discussions with Mr. Sterns and you have now got the Hollywood Cafe, what happened thereafter?

A. Well, before I missed out a paragraph there.

Before I taken out, taken over the Hollywood Cafe, I was talking to Mr. Sterns and I give him a check for approximately \$1,300.00 more.

Q. You gave a check to Mr. Sterns in that amount? A. Yes.

Q. Approximately \$1,300.00?

A. That is right.

Q. Refreshing your recollection, Mr. Smith, could it have been \$1296.00?

A. Well, I couldn't say exactly what it was. I would say around \$1,200.00.

Q. You said \$1,300.00 a moment ago.

A. Between twelve and thirteen hundred.

Q. Go ahead.

A. When I had the Hollywood Cafe at Santa Monica Boulevard I saw Mr. Sterns several times, and, why, one day I got in five cases of whiskey.

Q. Do you know what kind of whiskey?

A. Well, it was either Rocky Springs or Clayton: I am not sure.

Q. Did you pay anything more for that whiskey

(Testimony of Luther J. Smith.)

at the time you got it?      A. \$300.00.

Q. \$300.00 for five cases?      A. That is right.

Q. \$60.00 a case?      A. That is right.

Q. Do you know to whom you paid that \$300.00?

Whom did you pay the \$300.00 to?

A. Someone that delivered the whiskey.

Q. You don't know who it was?

A. No, I don't.

Q. What happened thereafter?

A. Well, then in about, oh, I would say another month or maybe another six weeks I got in touch with Mr. Sterns again and he told me to go down to the warehouse, down around—I don't know——

Q. What was the name of it? Was it the South Pacific Wholesale Company warehouse?

A. Warehouse, yes.

The Court: Do you know or don't you know?

The Witness: It was South Pacific Warehouse, but I [186] don't know the address.

The Court: All right. Go ahead.

The Witness: I went down there and I believe I picked up 35 cases, I am not sure.

Q. (By Mr. Burrell): I will hand you Exhibit H, the first page thereof, which purports to be an invoice of South Pacific Wholesale Company, bearing the name of Luther J. Smith on its face. You will note the date shown thereon is May 2, 1944. How many cases are indicated in that invoice?

A. 30 cases.

Q. Does that refresh your memory now? You believe the 30 cases is correct?      A. Yes.

(Testimony of Luther J. Smith.)

Q. What brand is shown in that invoice?

A. Rocky Springs.

Q. Is that correct? A. That is right.

Q. What is the unit price shown there, cost to you, of that whiskey? A. \$30.08 a case.

Q. Is there anything else shown on the invoice that you purchased—I am sorry. I am looking at another line.

What is the total amount of that invoice?

A. \$1,086.00. [187]

Q. Did you pay that amount directly to South Pacific Wholesale Company, pursuant to this invoice?

A. No, I didn't give them anything.

Q. Is it then your testimony that the total amounts of money you paid for the receipt of these 30 cases of Rocky Springs whiskey was the sum of fourteen hundred to sixteen hundred dollars in cash you paid earlier, and the sum of between twelve hundred and thirteen hundred dollars you paid directly to Mr. Sterns? A. That is right.

Q. Was it your understanding and knowledge at the time of this transaction that you were paying considerably in excess of the OPA legal maximum for this liquor?

A. I understood it was going to cost me \$45.00 a case.

Q. Did you know what the legal maximum was for the whiskey? A. No, I didn't.

Q. Did you know it was less than what you were paying?



(Testimony of Luther J. Smith.)

A. No, I didn't know that.

Q. You do know how much you paid for this whiskey.

A. That is right.

Q. What is the total sum you paid for this whiskey? Can you give us that figure?

A. Well, it was approximately in cash around \$1,400.00. And then around \$1,300.00 with a check.

Q. It is your testimony you paid approximately \$2,700.00 for these 30 cases of Rocky Springs whiskey invoiced from South Pacific to you for \$1,086.00? Is that your testimony?

A. Well, I think I got 35 cases.

Q. You did——

The Court: Don't argue with your witness.

Q. (By Mr. Burrell): When you say 35 cases, are you referring to additional five cases you thought was either Rocky Springs or Clayton you paid the driver \$300.00 for?

A. That is right.

Mr. Burrell: I believe that is all.

### Cross Examination

Q. (By Mr. Reed): Mr. Smith, when the liquor was delivered to you, did you receive an invoice, a copy of this (indicating)?

A. No, I don't think so.

Q. Who delivered it to you?

A. One of the men working for Mr. Sterns.

Q. How do you know he was working for Mr. Sterns?

A. Well, he told me he was.

(Testimony of Luther J. Smith.)

Q. This first payment, when you gave this stranger whom you can't identify the money, how do you know he had a connection with Mr. Sterns? How do you know that Mr. [189] Sterns got that money?

A. That I don't know. All that Mr. Sterns had was he had it on the list, that I had gave him money.

Q. How many times did you see Mr. Sterns during 1944?

A. Oh, I would say three times.

Q. Would you have remembered him if you hadn't seen him in the courtroom here being referred to as Mr. Sterns?

A. No, I wouldn't.

Q. Did you get this Clayton whiskey from Mr. Sterns?

A. I did.

Q. Are you sure?

A. Well, the five cases I am sure.

Q. Mr. Smith, is this your signature (indicating)?

A. Yes, my signature.

Q. Would you like to write it again, please?

A. (Witness complies.)

Mr. Reed: They correspond all right.

Q. (By Mr. Reed): Mr. Smith, I believe you said you hadn't seen this before.

A. This (indicating)?

Q. Yes.

A. Well, I saw it when I picked up the whiskey at the warehouse; when I signed for it.

Q. I believe this reads, "The undersigned expressly [190] represents that he has not paid or

(Testimony of Luther J. Smith.)

agreed to pay any money or consideration whatsoever for the merchandise set forth above other than the invoice price set forth above and agrees not to pay any other or additional consideration for said merchandise.

“If any price or consideration in addition to that set forth on this invoice is requested for the merchandise do not pay the same and notify the South Pacific Wholesale Company immediately of such request.

“I have read and understand the foregoing and agree to the same.”

In view of that, would you like to change your testimony about what you paid Mr. Sterns for the liquor?

A. Well, when I went to pick this up, this liquor, I didn't pay anything for that. I just signed for it. That looks like the copy there I signed (indicating).

Q. Let me see. You made three payments, the first one was for how much?

A. The first was around \$1,400.00. I am not sure. I am not sure. I said around \$1,400.00.

Q. You paid it to an unknown person?

A. That is right.

Q. You wouldn't know him if he walked in here?

A. Well, I believe I would.

Q. How did you connect him up with Mr. Sterns? [191]

A. Well, at that time, at that time I didn't know Mr. Sterns at that time.

(Testimony of Luther J. Smith.)

Q. What makes you believe Mr. Sterns got that money?

A. I couldn't say Mr. Sterns did get that money.

Q. You said here that you paid three times for this liquor in a total amount that slips my mind at the moment, but it was way over the ceiling price, and here you state you agree to notify South Pacific if such a demand was made upon you.

I am not trying to confuse you. I am trying to determine exactly what you know Mr. Sterns got from you. He is the man on trial here. We want to be sure of what he received from you. We don't want him to be charged with having received more than you actually delivered to him, that you know he received.

A. Well, the man I give the \$1,400.00 to, how much of that he gave Mr. Sterns I do not know.

Q. And the second payment, whom did you make that to?

A. I made that to Mr. Sterns.

Q. That was in what amount?

A. Oh, approximately \$1,300.00.

Q. It couldn't have been \$1,200.00?

A. I don't remember. I said between twelve and thirteen hundred dollars. That was a check made out on the 7th and Alvarado—— [192]

Q. Did that include payment for the five cases of Clayton you say you received?

A. No, it did not.

Q. The Clayton whiskey was paid for in addition to that?

A. That is right.



(Testimony of Luther J. Smith.)

Q. You paid Mr. Sterns for that?

A. I paid the driver for that.

Q. What denominations were those bills you paid Mr. Sterns, that twelve or thirteen hundred dollars? I believe you testified you paid him in cash.

A. Mr. Sterns?

Q. Yes.

A. No. I said I give him a check for that.

Q. Oh, you gave him a check. I beg your pardon.

A. Yes.

Mr. Reed: That is all.

Mr. Burrell: That is all for this witness.

The Court: This witness can be excused, can he?

Mr. Burrell: Yes.

Mr. Reed: Yes.

The Court: You are excused. Thank you for giving your testimony to the Court.

(Witness excused.)

Mr. Burrell: Respondent would like to call to the [193] witness stand John Randolph.

Whereupon,

### JOHN H. RANDOLPH

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name and address for the record, please?

The Witness: John H. Randolph. 4678 La Mirada, Los Angeles 29.

(Testimony of John H. Randolph.)

Direct Examination

Q. (By Mr. Burrell): Are you here in response to a subpoena? A. Yes.

Q. Where were you located and in what business during the years 1943 and 1944, Mr. Randolph?

A. Part of '43 and part of '44 I was located at, I think the address was 6160 Hollywood Boulevard, called the Sportsmen's Club, originally called the Foreign Club.

Q. In the course of the operation of that business, did you contact or were you contacted by Mr. Sterns? A. I contacted Mr. Sterns.

Q. Personally? A. I telephoned.

Q. By telephone? [194] A. Yes.

Q. Did you recognize his voice? Did you know with whom you were dealing?

A. No, I did not.

Q. What transpired in that telephone conversation? A. Well, it was through——

Mr. Reed: Objection, your Honor. I don't think this is pertinent. He hasn't identified who he talked with on the phone.

The Court: Read back the answer.

(The record was read.)

The Court: Objection sustained.

Q. (By Mr. Burrell): Did you ever have any personal discussions with Mr. Sterns under circumstances where you knew him and knew with whom you were dealing?

A. Well, I mean he called at my place of business.

(Testimony of John H. Randolph.)

Q. Personally?           A. Personally.

Q. Identified himself as Mr. Sterns?

A. That is right.

Q. Would you recognize the gentleman now if you saw him?

A. I don't know whether I would or not. That was about eight or nine years ago. [195]

Q. Did you pay any money to this gentleman who identified himself as Mr. Sterns?

A. I did.

Q. How?           A. Cash.

Q. How much and when?

A. It ran between five hundred and six hundred dollars. I don't recall when it was. I did give that information to some fellows that came out to see me from the Collector of Internal Revenue some time ago.

Q. What did you understand that you were paying this money for?

A. Well, I was to get some liquor. That was to be the additional cost of the liquor.

Q. Did this gentleman who identified himself as Mr. Sterns represent that he could arrange for you to have a supply of whiskey?

A. Yes, he did.

Q. That is the reason you paid this money to him?           A. That is right.

Q. Did you receive any whiskey?

A. I didn't for quite a while. I kept calling him. I suppose I talked to Mr. Sterns, I don't know—I talked to somebody who represented himself as Mr.

(Testimony of John H. Randolph.)

Sterns and finally I got somewhere between three and six cases of [196] liquor, which were delivered to me in the evening, which I paid cash for and was told that due to the fact that his license——

Mr. Reed: Objection, your Honor. This witness hasn't identified Mr. Sterns. There is no evidence to indicate that he is testifying about the Petitioner in this case.

The Court: Do you know who brought the three to six cases of liquor to you?

The Witness: Well, I would say it was Mr. Sterns brought it about 6:00 o'clock in the evening.

The Court: How did he bring them to you?

The Witness: In his car.

The Court: All right. Objection overruled.

Q. (By Mr. Burrell): Did you thereafter receive deliveries of whiskey from the South Pacific Wholesale Company? A. I did.

The Court: This will be in addition to some whiskey that was brought to you by someone in an automobile, or are you talking about the same whiskey?

The Witness: No. I thought he questioned me—— will you ask the question again?

Q. (By Mr. Burrell): Did you thereafter receive any whiskey in addition? [197]

A. Additionally, yes; that is what I thought——

Q. Did you receive invoices from the South Pacific Wholesale Company? A. I did.

Q. Did you pay for those invoices?

A. I paid for them in check.

Q. You pay for those invoices in full?



(Testimony of John H. Randolph.)

A. Yes, sir, for the amount of the invoice.

Q. In addition to paying those invoices in full, you paid in cash to a gentleman representing himself as Mr. Sterns sums of money in addition?

The Court: That is a leading question. The witness has not testified to that effect. I understand that he paid somebody between five hundred and six hundred dollars, for which he got between three and six cases of liquor.

The Witness: No. May I correct that statement, your Honor?

The Court: You had better make yourself clear about that.

The Witness: I paid him cash for the liquor, those three to six cases of liquor he brought to me.

The Court: How much did you pay for them?

The Witness: That I don't know. I never had an invoice.

The Court: You don't know whether you got three, [198] four, five or six cases?

The Witness: No, that was a long time ago. I submitted my records to the Collector of Internal Revenue. It was on my records.

The Court: Does the agent now have your records?

The Witness: No, my records were destroyed. I mean this was in '43 and '44. They do have some check records, if that is what you want.

The Court: Who did you pay between five and six hundred dollars to somebody for?

The Witness: To get some liquor.

(Testimony of John H. Randolph.)

The Court: How much did you pay for the liquor that you say was in an amount of between two and three and six cases?

The Witness: I say I couldn't remember what I paid for that.

The Court: I just wanted to be sure. I am trying to follow your testimony.

The Witness: Excuse me.

The Court: I am making notes on your testimony.

The Witness: I never got an invoice on those first cases of liquor.

The Court: Go ahead, Mr. Burrell.

Q. (By Mr. Burrell): In respect to the five to six hundred dollars cash [199] you paid to this man representing himself as Mr. Sterns, did you ever receive any refunds of that amount?

A. No, sir.

Mr. Reed: Your Honor, I object to this testimony. Apparently, there is better evidence than Respondent has produced. If this witness has books, invoices, checks and so forth, I think they should be brought into court. His memory is vague and somewhat indefinite about these items.

The Court: Do you have any——

Mr. Burrell: He has testified, your Honor, that the records were destroyed. We do not have those records. We have the invoices, of course, in Respondent's Exhibit H from South Pacific Wholesale Company for all the whiskey delivered by them to

(Testimony of John H. Randolph.)

Mr. Randolph. As a matter of fact, we have photostats of checks we will introduce.

Q. (By Mr. Burrell): I will hand you Respondent's Exhibit H, which contains a number of invoices from South Pacific Wholesale Company to you. You have already testified that you paid the full amount of those invoices.

Mr. Burrell: Will you please mark this?

The Clerk: Respondent's Exhibit N for identification.

(The document above referred to was marked Respondent's Exhibit N for identification.)

Q. (By Mr. Burrell): I hand you what is marked Respondent's Exhibit N for identification, and ask you what they are.

A. These are checks. I haven't analyzed—I think they could tie in with the invoices.

The Court: How many invoices are there for sales? This is part of Exhibit H (indicating).

The Witness: The first invoice is five cases for \$136.95.

The Court: What is the date of that invoice?

The Witness: October 4th. My check is dated October 4th, \$136.95.

Q. (By Mr. Burrell): Was that in payment of that invoice, Mr. Randolph?

A. I would say it was. I mean it is made payable to the South Pacific Wholesale Company.

The next invoice here is dated January 6th for ten cases for \$296.50.

(Testimony of John H. Randolph.)

The Court: What date is that invoice? You don't have to take them in order. Give me the date.

The Witness: This is dated January 6th for \$296.50, check made payable to the South Pacific Wholesale.

The Court: January 6th of what year, Mr. Burrell?

The Witness: 1944. Another one on January 6, 1944, \$296.50, check dated—just a minute. [201]

Mr. Reed: '43.

The Witness: That must be a mistake. I wasn't in business in 1943.

The Court: Was there a check in payment of this other purchase on January 6, 1944?

The Witness: Yes, your Honor.

The Court: What is that?

The Witness: For \$296.50.

The Court: Well now, we have three checks of this witness that have be explained. How many other checks are there?

Mr. Burrell: One for each of the invoices, your Honor; three more.

The Court: Without taking the time to read this all into the record, do the checks correspond to the invoices?

Mr. Burrell: Yes.

The Witness: Yes, they do.

The Court: Then we don't have to go through all this.

Mr. Burrell: I will offer Respondent's Exhibit N in evidence at this time, your Honor.



(Testimony of John H. Randolph.)

The Court: Any objection?

Mr. Reed: No objection.

The Court: Respondent's N is received in evidence.

(The document heretofore marked Respondent's Exhibit N was received in evidence.) [202]

Q. (By Mr. Burrell): Was it your understanding that you paid the five or six hundred dollars——

The Court: That is a leading question. Ask him about a fact. Ask him to testify about a fact.

Q. (By Mr. Burrell): What was your understanding of the reason why you were paying five to six hundred dollars to some person with respect to future liquor deliveries?

A. That was the only way I could get liquor in my connections. I was new in the business. I understand I would have to pay over the ceiling price in order to get whiskey.

Q. Did that sum represent over the ceiling price?

A. Yes, it did.

Mr. Burrell: That is all.

### Cross Examination

Q. (By Mr. Reed): Mr. Randolph, did you ever receive national brand liquor from Mr. Sterns?

A. National brand?

Q. Old Crow, Haig & Haig pinch bottle, or any of the old men?

A. Not to the best of my knowledge.

Q. Did you ever receive an evening delivery in response [203] to a telephone call from you, urging

(Testimony of John H. Randolph.)

Mr. Sterns to deliver to you any national brands?

A. I don't believe it was national brands. That is the one I don't have the invoice for. I testified that I received a delivery in the evening, but what the brand was I don't know.

Q. What did you pay for that? Could that have been that five or six hundred dollars?

A. No. I paid cash for it.

Q. Did you treat that five or six hundred dollars that you say you paid for getting liquor, did you treat that as business expense in your own records?

A. It was money taken out of the business to pay for it, yes.

Q. Did the Revenue Bureau allow it as expense?

A. I don't know. Some of the checks I drew to myself and that \$500.00, I don't know how that was treated.

Q. Are you sure you gave the five or six hundred dollars to Mr. Sterns?

A. I am reasonably positive.

Q. But you are not sure that you would know Mr. Sterns if he came in the room here?

A. Well, I say it has been about nine years since I have seen the man.

Q. Do you see him in the room? [204]

A. Do I see him in the room?

Q. Yes. A. Yes.

Q. Would you know him if you passed him on the street?

A. I testified if I had passed him on the street I don't think I would have known him.

(Testimony of John H. Randolph.)

Q. What did you pay for the national brand liquor that was delivered to you?

A. I said I don't remember.

The Court: He didn't say he got any national brand liquor, Mr. Reed.

The Witness: No.

The Court: He didn't admit he received any national brand liquor. What liquor are you referring to?

Mr. Reed: I am referring to the evening delivery.

The Witness: That is right. The liquor was delivered to me in the evening, and what the brand was I don't recall. And I paid for it in cash.

The Court: Now, you don't recall what the brand was?

The Witness: No, your Honor.

Q. (By Mr. Reed): Mr. Randolph, you do not know definitely whether or not you paid that money to Mr. Sterns? A. That first money? [205]

Q. Yes.

A. Well, I am reasonably sure, after seeing him here again today and yesterday.

Q. You paid it in cash? A. Cash.

Q. What denominations?

A. I don't know. That is nine years ago.

Q. How do you remember it was five or six hundred dollars then?

A. Well, at the time, the reason I remember that is because it was shortly after I was out of business that the Collector of Internal Revenue—and those things were fresh in my memory. Today some of

(Testimony of John H. Randolph.)

those things have slipped my memory, when you are not in the same line of business.

Q. The Collector of Internal Revenue audited your returns and you claimed this five or six hundred dollars expense?

A. It was taken out of my cash.

Q. But do I understand you to say you remembered it at that time because your returns were audited and you claimed it as an expense?

A. Well, that I couldn't—

The Court: Let me ask you this question:—I think the question can be reframed in this way—What was the occasion for your telling a revenue agent you had made [206] some payment of five or six hundred dollars to Mr. Sterns? What was the occasion for that?

The Witness: The occasion was they came over to my office and showed me some invoices from South Pacific, and asked me to bring my records over to the office where they could inspect them. And at that time they asked me for a statement of the facts, and I gave them a statement of the facts.

The Court: That is the time you mentioned the payment of five or six hundred dollars?

The Witness: Yes, your Honor.

Q. (By Mr. Reed): Do you have a copy of that statement you gave the Bureau?

A. I think the Bureau has a copy of it.

Q. Was it a sworn statement?

A. No, it was not a sworn statement.



(Testimony of John H. Randolph.)

Q. No stenographer was taking down the transcript?

A. I think it was written in my longhand, in my writing.

Q. Mr. Randolph, in the subsequent purchases from South Pacific or from Mr. Sterns, do those canceled checks represent the ceiling price?

A. To the best of my knowledge they were ceiling prices. They were the exact amount of the invoices, yes, sir.

Mr. Reed: That is all. [207]

Mr. Burrell: That is all, your Honor.

The Court: May this witness be excused?

Mr. Reed: Yes.

Mr. Burrell: Yes.

The Court: You are excused. And thank you for appearing in court.

(Witness excused.)

Mr. Burrell: I would like to call Mr. Robert E. McClain at this time.  
Whereupon,

**ROBERT E. McCLAIN**

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows.

The Clerk: Please be seated. Please state your name, Mr. Witness, and your address.

The Witness: Robert E. McClain. Blue Jay, California.

(Testimony of Robert E. McClain.)

Direct Examination

Q. (By Mr. Burrell): Mr. McClain, are you here in response to a subpoena? A. Yes.

Q. What is your business and where was it located during the years 1943 and 1944? [208]

A. In San Bernardino, at 469 Third Street.

Q. What was the name of the business?

A. I called it the Hitching Post Cafe.

Q. During those years, did you buy any whiskey from the South Pacific Wholesale Company?

A. I had whiskey billed to me from the South Pacific Wholesale Company.

Q. I will hand you Respondent's Exhibit H, which contains a group of invoices from the South Pacific Wholesale Company.

Mr. Burrell: If your Honor will permit, I believe it will be of value in this case to have this witness read the pertinent data on these invoices.

The Court: Very well.

Q. (By the Burrell): Read the date of the invoices and the number of cases and the brand, the unit price, and the total amount.

A. Invoice No. 1639. January 27, '44. 50 cases, fifths, Rocky Springs, 85 proof, and unit price \$29.65. Total \$1,482.50.

Q. Go ahead. There are about five more.

The Court: What was the total amount?

The Witness: \$1,482.50.

Invoice No. 1556. January 12, 1944. 30 cases, quarts, U. D. L. Original, 85 proof, Straight Bour-

(Testimony of Robert E. McClain.)

bon. Unit [209] price \$43.80. Total amount \$1,-314.00.

Invoice No. 1477, dated December 24, 1943. 20 cases, pints, U. D. L., 85 proof. Unit price \$44.70. Total amount \$894.00.

Invoice No. 37, dated October 7, 1943. 20 cases, fifths, Baltimore Club. Unit price \$27.39. Total amount \$547.80.

There is an extension here I don't know anything about. Do you want me to read that?

Mr. Burrell: It is penciled in. Let the record show there is a further extension in red pencil.

Q. (By Mr. Burrell): Go ahead. Read it for whatever it is worth.

A. \$496.40, and \$38.40.

Q. Designated as? A. Designated as tax.

The Court: The \$34.80 is tax?

The Witness: \$38.40 is designated——

The Court: \$38.40?

The Witness: Yes. That is designated as tax.

The Court: What is the \$496.40?

The Witness: It is in red pencil figures. I don't recognize it.

The Court: What is the amount of the invoice, please? [210]

The Witness: \$547.80, typewritten amount.

The Court: Disregard anything written in pencil. Go ahead now. What is the next one?

The Witness: Invoice 1104, dated November 5, 1943. 25 cases, fifths, Baltimore Club, 80.6 proof. Unit price \$27.40. Total amount \$685.00.

(Testimony of Robert E. McClain.)

Invoice 1139, dated 11-15-43. 20 cases, fifths, Rocky Springs, 85 proof. Price \$29.50. Total \$590.00.

Invoice 1165, 11-16-43. 80 cases, fifths, Rocky Springs, 85 proof. Unit price \$29.65. Total amount \$2,372.00.

Q. (By Mr. Burrell): Is that all of them, Mr. McClain?

A. Yes; I think there were seven invoices.

Q. Did you pay to South Pacific directly the amounts of these invoices? A. No.

Mr. Burrell: I will hand to the Clerk at this time a group of documents and ask they be marked for identification.

The Clerk: Exhibit O for identification.

(The documents above referred to were marked Respondent's Exhibit O for identification.)

Q. (By Mr. Burrell): Mr. McClain, I hand you Respondent's Exhibit O for [211] identification, and ask you to identify it.

The Court: Are those your checks, please?

The Witness: Yes.

The Court: Are those checks given in payment of the invoices?

The Witness: Yes.

The Court: Do they correspond to the invoices?

The Witness: Not in exact amounts.

The Court: All right. Show the checks, please, to Mr. Reed.

Mr. Reed: I have seen them, your Honor.



(Testimony of Robert E. McClain.)

Mr. Burrell: I will offer them in evidence at this time, your Honor.

The Court: Any objection?

Mr. Reed: No objection.

The Court: You don't object on the basis these are this witness' checks, do you?

Mr. Reed: Your Honor, no, they are not all his checks.

Inez McClain, by R. E. McClain, that isn't your check?

The Witness: It is signed by me.

Mr. Reed: Inez McClain, is that signed by you (indicating)?

The Witness: No, that is her check, my wife's [212] check.

Mr. Reed: Who is this one signed by (indicating)?

The Witness: My wife.

Mr. Burrell: There are two checks in this group——

The Court: To whom are those checks made payable?

Q. (By Mr. Burrell): To whom are those checks made payable, all checks?

A. One is made payable to Cy Sterns, one is made payable to cash, one is made payable to Cy Sterns, Cy Sterns.

Q. The one check made payable to cash, what endorsement name appears thereon? By whom is it endorsed?

A. It is endorsed by South Pacific Wholesale.

(Testimony of Robert E. McClain.)

Q. To whom did you deliver that check?

A. Mr. Sterns.

Q. Were all of these checks in this exhibit delivered by you to Mr. Sterns?

A. They were.

Q. Are all these checks drawn on your account in respect to the operation of your business?

A. Well, some of the money I got from my wife.

Q. Are they to pay——

A. They were for operating the place.

Q. Will you read the amounts of these checks, please?

The Court: And the dates.

The Witness: January 18, 1944, \$2,750.00. December [213] 16, 1943, \$3,200.00. November 10, 1943, \$4,350.00. November 6, 1943, \$1,950.90.

Q. (By Mr. Burrell): Do you know the total amount of these checks, Mr. McClain? Making a brief computation, what is the total amount of these checks? A. Approximately \$12,000.00.

Q. Making a brief computation of the total amount of the invoices you earlier read into the record, what is it?

A. Approximately \$7,800.00, something like that.

Q. What is your explanation of the difference of approximately \$4,365.00, Mr. McClain?

A. It was an overage paid for the delivery of whiskey.

Mr. Reed: Will you please repeat that?

The Witness: I said the difference was an overage paid for the delivery of whiskey.

(Testimony of Robert E. McClain.)

Q. (By Mr. Burrell): To whom did you pay that overage?      A. Mr. Cy Sterns.

Q. Did you pay it to him personally?

A. I gave him these checks personally.

Q. Did you know at the time to whom you were paying it?      A. Yes.

Q. Would you recognize the gentleman if you saw him [214] again?      A. Yes.

Can you identify Mr. Sterns?      A. Yes.

Q. You would have known him at all times since the transaction, would you?      A. Yes.

Mr. Burrell: That is all.

### Cross Examination

Q. (By Mr. Reed): Mr. McClain, what were the brands of whiskey you bought from Mr. Sterns?

A. Baltimore Club, Rocky Springs, and U. D. L.

Q. Did you ever receive some Old Taylor from him?      A. No.

Q. Not 40 cases?      A. No, sir, I didn't.

Q. Never?      A. No, sir.

Q. What was the conversation when you delivered these checks that you say are in excess of these invoices?

A. Mr. Sterns gave me the amount of the merchandise on a memoranda, and I wrote him a check for it, filled out the check for it.

Q. Now, the payments you made to Mr. Sterns, did you [215] record them in your books for merchandise purchased?

(Testimony of Robert E. McClain.)

A. My records show the face of the South Pacific Wholesale invoices.

The Court: Let me just clarify that. You did keep records?

The Witness: Yes.

The Court: You say you entered on your records the amounts shown on the South Pacific invoices?

The Witness: That is right.

Q. (By Mr. Reed): What did you do with the balance? How did you treat the balance on your books?

A. I treated it as a gift or loss, or didn't show it at all.

Q. Did you claim it on your tax returns?

A. I did not.

Q. Did you make money in your bar?

A. Yes.

Q. What are your pouring costs?

A. That is a little hard to say. I imagine at that time they were around 40 per cent.

Q. Including this excess payment?

A. I don't know those figures exactly, because I haven't got them.

Q. Are you sure you received no other consideration [216] in payment of those checks?

A. That is right.

Q. How did you meet Mr. Sterns?

A. I met him in my place of business. He was introduced to me by two gentlemen.

Q. Who were they?



(Testimony of Robert E. McClain.)

A. Mr. Harry Griffin of San Bernardino, who was secretary of the Culinary Workers Union, and a Mr. Henderson or Hendrickson of Upland, who ran the Sycamore Inn, restaurant and cocktail lounge.

Q. What is the minimum a bar can operate profitably on pouring costs?

A. For a proper operation of whiskey, whiskey costs alone, or complete cost?

Q. Complete costs.

A. Pouring costs of liquor——

The Court: The two things are different, pouring cost and complete cost, aren't they?

Mr. Reed: He meant just the cost of the liquor, your Honor.

The Witness: The cost of liquor, what it costs to put together the drink, without ice and help, without labor?

Q. (By Mr. Reed): Yes.

A. To operate profitably, about 30 or 32 per cent. [217].

Q. With 40 per cent cost, you were losing money?

A. I wasn't losing a lot of money. I wasn't making a lot of money.

Q. Do your records show that you lost money in the business? A. No, I didn't lose it.

Q. Did you have substantial profits?

A. I wouldn't know whether they were substantial or I don't recall the exact figures. However, my records show that——

Q. If your pouring costs were 40 per cent and

(Testimony of Robert E. McClain.)

you couldn't operate profitably with pouring costs over 32 per cent, it appears you were conducting your business profitless.

A. I didn't operate a profitless business. Of course, I did a lot of the work myself and my wife worked in the business; we paid ourselves no salary.

Q. But yet you lost money when your pouring costs went over 32 per cent?

A. I said to operate a profitable business 32, 33 per cent pouring costs would be a profitable operation.

Q. What did you sell a shot of Rocky Springs for over the bar? A. 45 cents.

Q. What was the ceiling on it?

A. 45 cents. [218]

Q. Where did you take delivery of this liquor?

A. I took delivery, the first delivery I took from Mr. Cy Sterns at Upland. He called me on the telephone and told me he was delivering some liquor and he wanted to know if I could pick up mine. He had either 20 or 25 cases; I am not sure.

Q. That was the first?

A. That was Baltimore Club whiskey, I think.

The Court: Just for our records, how far is Upland from San Bernardino?

The Witness: Approximately 14, 15 miles.

Q. (By Mr. Reed): Was this your first invoice, October 26th?

A. That wasn't my invoice.

The Court: The first one is No. 1369.

(Testimony of Robert E. McClain.)

The Witness: That isn't the first invoice, either. They are not in date order.

The Court: The first one you read.

The Witness: The first one read, yes. I think this was the invoice, October 7, 1943 (indicating). I believe that was the first one.

Q. (By Mr. Reed): When did you pay for this?

A. I paid Mr. Sterns by check.

Q. On that date? [219]

A. As far as I know; as far as I remember.

Q. Well, which one of those checks?

A. I don't recall which check it would be.

Mr. Reed: Let the record show this invoice is dated October 7, 1943. There is no corresponding check. The check nearest to that date is dated November 6, 1943, a month later.

Q. (By Mr. Reed): When did you pay for this? You said you paid for it when it was delivered?

A. As near as I remember, I paid for all merchandise on delivery. I had ordered more than that amount of whiskey, so I don't recall the individual case.

Q. When you took delivery there in Upland, did you write out the check at the time you took delivery?

A. I don't remember. My impression was I gave Mr. Sterns a check at that time.

The Court: What do you mean by "at that time"?

The Witness: At the time I took delivery of the merchandise.

(Testimony of Robert E. McClain.)

The Court: At the time you took delivery. Did he then give you an invoice?

The Witness: No.

The Court: The invoice was mailed to you?

The Witness: Invoices were mailed to me. [220]

The Court: When you received them, were they marked paid?

The Witness: I don't recall. I believe the Alcohol Tax Unit has those invoices. I think they picked them up.

Mr. Reed: If your Honor please, if those invoices are in the possession of the Government, that is the best evidence.

Mr. Burrell: We do not have them, your Honor.

The Court: Those invoices would be presumably the duplicate copies of the invoices in Exhibit H?

Mr. Burrell: That is correct, your Honor.

The Court: Is it your understanding that your invoices added up to—how much did you say?

The Witness: Some seven thousand dollars.

The Court: My addition is \$7,885.30. Is that what you have, Mr. Burrell?

Mr. Burrell: Give me one second. I have \$7,885.30.

The Court: That is the addition I have.

Mr. Burrell: Has your Honor computed the amount of checks in Exhibit——

The Court: \$12,250.90.

Mr. Burrell: That is correct.

The Court: The difference would be \$4,365.60.

Mr. Burrell: Yes, your Honor. [221]

Mr. Reed: If your Honor please, I believe that



(Testimony of Robert E. McClain.)

you have the computation. Does the total of these checks correspond with the total of these invoices?

The Court: The total of the checks is \$12,250.90. The total of the invoices is \$7,885.30. The difference is \$4,465.60.

Q. (By Mr. Reed): Would it not be unusual, Mr. McClain, for you to pay for the whiskey before getting an invoice?

A. I very seldom did pay for any merchandise prior to delivery.

The Court: Prior to delivery of the merchandise?

The Witness: Prior to delivery of the merchandise.

The Court: Well, read the question, please.

(The question was read.)

The Court: Before getting an invoice?

The Witness: Yes, it would be.

The Court: It would be?

The Witness: Yes.

Q. (By Mr. Reed): Was it not against the law to take delivery of whiskey without an invoice from a licensor or licensee?

A. I don't know—the understanding I had, the whiskey would be billed to me through a licensed wholesaler, when I purchased it from Mr. Sterns.

Q. Is the next order here, dated November 11th, is that the next order, or November 15th? Will you pick out the next one, please?

A. October 7th, 11-5, 11-15, 11-16.

Q. Do you have a November 5th there?

(Testimony of Robert E. McClain.)

A. 11-5, I think; 11-5-43.

Q. Mr. McClain, did you ever receive any national brand liquor from Hendrickson?

A. No.

Q. You always bought your national brands from whom?

A. What do you mean by "national brands"?

Q. Recognized brands, like the Old Man, Old Crow, Old Taylor.

A. Simon Levi, McKesson & Robbins.

Q. There was never a shortage during this period that prompted you to get 40 cases of Old Taylor from Hendrickson?

A. No, I would have been glad to have had it.  
The Court: What is the answer, yes or no?

The Witness: No, I didn't have it.

Mr. Reed: That is all.

#### Redirect Examination

Q. (By Mr. Burrell): Did you ever receive any refunds of the \$4,365.60, which you testified was overage paid to Mr. Sterns? A. No.

Q. Did you receive any additional whiskey or other consideration for that sum of money?

A. No.

Mr. Burrell: That is all.

The Court: With respect to that, the total amount of the checks that you paid to Mr. Sterns is \$12,250.90.

Let us put it this way: Did you ever get any refund of any of that amount?

(Testimony of Robert E. McClain.)

The Witness: No.

The Court: May this witness be excused?

Mr. Burrell: Yes.

Mr. Reed: Yes.

The Court: Thank you for appearing in court, Mr. McClain, and you are now excused.

(Witness excused.)

Mr. Burrell: Your Honor, the Government's case consists of one more witness, the agent.

The Court: You have no other general witnesses?

Mr. Burrell: No.

The Court: I think we will recess for lunch, until 1:30, if that is enough time for you gentlemen. We will finish this afternoon.

Mr. Burrell: Oh, yes. I would expect so easily.

The Court: You can leave your papers here. The courtroom door will be locked.

(Whereupon, at 12:30 p.m., a recess was taken until 1:30 p.m. of the same day.) [224]

The Court: You may proceed.

Mr. Burrell: Respondent will call to the witness stand O. E. Cummins.

Whereupon,

O. E. CUMMINS

called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

The Clerk: Will you be seated, please? Please state your name and address for the record.

The Witness: O. E. Cummins; C-u-m-m-i-n-s.

(Testimony of O. E. Cummins.)

United States Post Office Building, Los Angeles, California.

The Court: I would like to ask you first, Mr. Burrell, if we understand what the determination of the Respondent is for 1943 and 1944.

According to the statement attached to the notice of deficiency, which is attached to the Petition, the Respondent has determined Mr. Sterns realized net income from his business in 1943 in the amount of \$160,492.21, one-half of which has been taxed to each Petitioner, is that right?

Mr. Burrell: Yes, your Honor. Statutory notice——

The Court: The salary item in Docket No. 37940 was \$1,005.63; salary of Mr. Sterns and Mrs. Sterns. That is the salary of Mrs. Sterns? [225]

Mr. Burrell: Yes, your Honor. That is indicated in the statement attached to the 90-Day Letter; in the other docket, at least.

The Court: What do we have there? You have waived the fraud penalty, so far as Mrs. Sterns is concerned, but no evidence has been introduced by the Petitioner relating to any salary of Mrs. Sterns.

That amount was reduced and apparently isn't in contest. That militated in the favor of Mrs. Sterns. I think that is right.

Mr. Burrell: I believe so, your Honor. Excuse me. Are we discussing the item——

The Court: I think it is perfectly clear. It took too much time. I will go on to the next one.



(Testimony of O. E. Cummins.)

In 1944 the Respondent has determined they had income realized by Mr. Sterns of \$75,615.24.

Mr. Burrell: Yes, your Honor.

The Court: Casualty loss deduction was allowed, and so that item isn't in question. Therefore, the determination is that in these two taxable years the Petitioner Mr. Sterns realized a total net income from his liquor business in the amount of \$236,107.45.

Upon what basis was that determined? What method did the Respondent use in making that determination?

Mr. Burrell: Do you want me to advise the Court [226] or Mr. Cummins to testify?

The Court: You advise the Court.

Mr. Burrell: On the reconstruction of the Petitioner's income by the method known as the bank deposits plus other undeposited identifiable sources of income, and adjustments to those items for such things as transfers and the bank deposits, loans identifiable, things of that sort, your Honor.

Also allowances have been made for cost of merchandise, expenses have been identified, refunds that the Petitioner may have made out of the bank deposits.

The Court: All right. Will you proceed now?

Mr. Burrell: Yes, your Honor.

#### Direct Examination

Q. (By Mr. Burrell): Mr. Cummins, what is your occupation?

(Testimony of O. E. Cummins.)

A. Internal Revenue Agent.

Q. For how long a time have you been an Internal Revenue Agent?      A. 26 years.

Q. In the course of your occupation as an Internal Revenue Agent, were you assigned to investigate into the tax returns of Petitioners Cy and Ruth Sterns?      A. I was.

Q. For the years 1943 and 1944? [227]

A. That is right.

Q. What is the date of that assignment? Can you give us an approximate date, without checking?

A. The latter part of '45 or early '46.

Q. For how long a time did you actively conduct this investigation?

The Court: Approximately, Mr. Cummins. These are just preliminary questions, sir.

The Witness: Approximately 190 days.

Q. (By Mr. Burrell): We already have in evidence the type of business that Mr. Sterns conducted and something his arrangements with the South Pacific Wholesale Company, which you have listened to here.

What is the result of your investigation, as to how Mr. Sterns actually conducted his operations?

A. I think he conducted it in line with the agreement——

Mr. Reed: I object, your Honor.

The Court: Read the question.

(The question was read.)

The Court: What is your objection?

(Testimony of O. E. Cummins.)

Mr. Reed: I think the best evidence of how he conducted his business should not be ascertained from investigation conducted after the years before us. The proof of how the man conducted his business has been given [228] by witnesses that were acquainted with it at the time, who had personal knowledge of it.

The Court: The objection is sustained. The question obviously calls for a conclusion.

Q. (By Mr. Burrell): At the commencement of your investigation, did you request of Mr. Sterns his books of account respecting his business?

A. I did.

Q. Did he produce any books of account?

A. He did not.

Q. Did he advise you anything at that time in respect to any books of account?

A. He said he had no books. He did produce canceled checks, part of them.

The Court: Did you have the impression he produced all that he had of his books?

The Witness: I believed him when he said he didn't have any books, yes.

Q. (By Mr. Burrell): Did you therefore resolve to a reconstruction of his income on some other method than his books? A. I did.

Q. What was that method?

A. That covers a lot of territory. [229]

The Court: It is described generally as what kind of method, Mr. Cummins. You can explain later.

(Testimony of O. E. Cummins.)

The Witness: The bank deposit method with adjustments in the way of deductions and additions, based upon evidence found other than in the bank deposits.

Q. (By Mr. Burrell): Did you investigate into the bank accounts that Mr. and Mrs. Sterns carried during the years 1943 and 1944?

A. I did.

Q. Did you compute and analyze those accounts?

A. I did.

Mr. Burrell: I will ask the Clerk at this time to mark for identification next in order a series of documents which are clipped together.

The Clerk: Exhibit P for identification.

(The document above referred to was marked

Respondent's Exhibit P for identification.)

Q. (By Mr. Burrell): Mr. Cummins, I hand you Respondent's Exhibit P for identification, and ask you to explain what it is.

A. That is a summary that resulted from an analysis of bank accounts.

Q. You have examined Respondent's Exhibit P, have you, prior heretofore? A. Yes. [230]

Q. Is it an accurate portrayal or representation and summarization of your investigation and your computations in this case? A. It is.

Mr. Reed: I object, your Honor. I don't believe that there is evidence in the record supporting that document. I have only had opportunity to examine that document a very few minutes. It is quite a lengthy instrument.



(Testimony of O. E. Cummins.)

It is unquestionably replete with omissions and errors. It is merely a revenue agent's opinion of what he thinks took place, completely unsupported by acceptable evidence.

The Court: Do you intend to offer Exhibit P?

Mr. Burrell: I do, your Honor. I may comment to your Honor that Exhibit P was handed to Mr. Reed for inspection and study yesterday morning at the commencement of the trial, and has been open to him at all times since, if that is of any significance here.

Mr. Reed: Mr. Burrell, I asked——

The Court: I suggest, Mr. Burrell, that you withhold offering Exhibit P and establish a foundation for it.

Mr. Burrell: Yes, I will be glad to do that.

The Court: Not offer it at this time. I think it is too early for you to present the summary of the investigation. We had better find out what your proof is. [231]

Mr. Burrell: I intend to have Mr. Cummins testify further, your Honor.

The Court: At the present the objection is sustained.

Q. (By Mr. Burrell): Mr. Cummins, referring to Respondent's Exhibit P for identification, what is on page 1, the first page?

The Court: Are you now going to testify from this summary? Is that the way you are going to proceed with this?

Mr. Burrell: I am going to use it as a means of

(Testimony of O. E. Cummins.)

calling things to his attention, your Honor, and things to refer to.

The Court: You are relying primarily on bank deposits, aren't you?

Mr. Burrell: Yes, your Honor.

The Court: Where are your bank statements?

Mr. Burrell: We have stipulated in the stipulation of facts filed herein the total amount of the deposits is in sum stated therein.

As I stated, the various banks involved are under subpoena and holding themselves ready, and both Mr. Reed and I discussed this earlier, and we both agreed it was not necessary for them to come into court with such voluminous records.

The Court: It is stipulated in 1943 the gross bank deposits were \$211,214.68. In 1944 the gross bank deposits were \$76,088.19. So that the Petitioner agrees to [232] those figures.

Now, the Petitioner has not agreed to the other items that would constitute adjustments, to show what withdrawals there were or why the withdrawals were made.

The stipulation saves time in the trial of the case, but it doesn't take us very far, in view of the objections Petitioner has made so far.

What do you intend to show, Mr. Burrell, with respect to the bank deposits?

Mr. Burrell: Well, the total amount of the deposits, I don't feel anything further need be shown. As to the adjustments thereto, I have Mr. Cum-

(Testimony of O. E. Cummins.)

mins' testimony, with his original work papers and records to testify from.

The Court: About what?

Mr. Burrell: That he analyzed the bank deposits and withdrawals, and that as a result of his investigation found transfers in certain amounts and loans in certain amounts, redeposits in certain amounts, and that sort of thing.

The Court: What is the net result of his analysis?

Mr. Burrell: That we arrive at the additional income that goes into the statutory notice of deficiency, your Honor.

The Court: Of \$160,492.21?

Mr. Burrell: Yes. We will arrive precisely at [233] that figure.

The Court: Why can't we get to the point right away and have the witness testify about the steps he took to arrive at those net figures?

Q. (By Mr. Burrell): Commencing with the total amount of bank deposits in 1943, Mr. Cummins, explain for the record the adjustments that you made to that figure in arriving at the final net income, which is added to the Petitioner's income in the statutory notice of deficiency.

Mr. Reed: Objection, if your Honor please. He is resorting to the same kind of information which was previously objected to and my objection sustained. I don't believe that his opinion, as to what withdrawals were used for, without support other than his opinion, is proper evidence.

(Testimony of O. E. Cummins.)

The Court: The question of what weight the Court will give to the explanation is a matter with which you are concerned. The agent is going to be allowed to explain his report.

The Court will consider whether the investigation has produced any direct evidence, and whether the Respondent has sustained his burden of proof, after considering all of the agent's testimony. But we will have to hear the agent's testimony. You can object for the record as we go along, [234] Mr. Reed.

Mr. Reed: Yes.

The Court: You may afterwards want to offer some rebuttal evidence, if you have it. That objection is overruled. We will go ahead and answer the question.

The Witness: This stipulation agreeing to so many deposits covers some three or four different bank accounts. Would you want that segregation with respect to all bank deposits or each bank statement separately?

As an example, I have deposits in the Bank of America at Wilshire and La Brea for 1943 of \$149,905.63. My report analyzes those in a separate schedule.

And we have another bank account in 1943 in the name of Sterns Liquor Company, with a total deposit of \$13,000.00.

We have another bank account in the Bank of America, West Hollywood, with total deposits for 1943 of \$48,309.05.



(Testimony of O. E. Cummins.)

Now, I have a summary of those all together, or I can give them for each bank separately.

The Court: All of the bank accounts apparently show total deposits in 1943 of \$211,214.68. You have determined that the net income for 1943 is \$160,492.21.

Mr. Burrell: Yes.

The Court: The difference is \$51,722.47. Now, what makes up the difference of \$51,722.47? [235]

The Witness: It is made up of undeposited checks received from——

The Court: Are you sure you understand me now?

The Witness: I think I do.

The Court: \$51,722.47 you have eliminated from tax.

The Witness: Yes.

The Court: The result is that that amount is accounted for and doesn't represent taxable income?

The Witness: That is correct. I can give you those items.

The Court: You have arrived at a net figure of taxable income of \$160,000.00.

The Witness: Yes.

The Court: Without going into too much detail at this time, what is the subject matter of that fifty-one thousand?

The Witness: There was eliminated from that on account of bank transfers and redeposits and loans \$42,921.51. Then there was added to that undeposited checks——

(Testimony of O. E. Cummins.)

The Court: Well, you eliminate forty-two thousand.

The Witness: That is right. That leaves \$168,293.17. And we included in income undeposited checks received from South Pacific Wholesale as commissions, and so forth, \$30,599.95. Undeposited currency for purchasing [236] cashier checks and payments to South Pacific for merchandise \$88,801.70. We should get a total there of \$287,694.82. We allowed as refunds on deposits to customers \$29,564.70. And we allowed as a deduction payment to South Pacific for merchandise \$97,637.91.

If we go up below that twenty-nine thousand you get another total there, a total of \$156,130.12. And then deduct the \$97,637.91 and it brings you out with a net income of \$160,492.21. I think that is right.

The Court: What did you do for 1944?

The Witness: Less bank transfers and similar items \$235.64, and brings a total of \$75,853.27.

Then we add to that undeposited checks received from South Pacific Wholesale Company as commissions and so forth \$26,281.87. Undeposited currency for use in buying cashier's checks and similar items \$26,777.75, and taxpayers' deposits to the account of Mrs. H. P. Hanthorn—

Mr. Reed: Pardon me. Will you speak a little louder, please?

The Witness: \$2,538.00. Making a gross of \$131,450.89. We allowed a deduction for refunds to customers of \$10,140.00. This then gives a subtotal of

(Testimony of O. E. Cummins.)

\$121,310.89. Cashier's checks and checks to South Pacific for purchase of [237] liquor \$45,695.65. And that brings the net income to \$75,615.24.

The Court: Mr. Cummins, what can you produce to support these various additions to income, the figure you have used for undeposited checks, undeposited currency?

The Witness: We have photostats of the cashier's checks and so forth purchased, deposited to South Pacific's bank account.

The Court: Well, that is cashier's checks. What about undeposited checks?

The Witness: Those are South Pacific's checks that he didn't deposit in his personal bank account, paid to him as commissions. Most of it is his personal, supposed to be personal profits on this agreement they had.

The Court: In 1943 you add to bank deposits \$30,599.95, for undeposited checks. And you add \$88,801.71 for currency used to purchase cashier's checks and so forth.

The Witness: That is correct.

The Court: Do you have photostat copies of cashier's checks in the amount of \$88,801.70?

The Witness: I don't think I would have all of them.

The Court: We are looking now at your typewritten report, but what do you have here that represents direct proof of the purchase of those cashier's checks? Do you have them here in the courtroom, Mr. Burrell? [238]

(Testimony of O. E. Cummins.)

Mr. Burrell: I believe we have some of them. I am not certain about all of them. As to the item of thirty-thousand some odd hundred dollars of undeposited checks from the South Pacific Wholesale Company——

The Court: Are those from South Pacific Wholesale?

Mr. Burrell: Yes.

Q. (By Mr. Burrell): Isn't that right, Mr. Cummins? A. Yes.

Q. Where did you get that figure?

A. Out of the South Pacific Wholesale Company's books.

Q. Books here in the courtroom and one of the exhibits? A. Yes.

The Court: How do you get an explanation of the checks of South Pacific? You get a figure for checks of South Pacific, but where do you find out that those checks were not deposited in the bank account?

The Witness: From the endorsements on the checks.

The Court: Then you have had to look at the checks?

The Witness: Absolutely, I have looked at thousands of checks in this thing.

The Court: The endorsements on the checks, of course, have to be ascertained by going outside of the books of South Pacific?

The Witness: To the South Pacific's checks.

The Court: So in addition to looking at the



(Testimony of O. E. Cummins.)

South Pacific's books, you also looked at South Pacific's checks.

The Witness: That is correct.

The Court: All right. Those checks, are they here in the courtroom?

The Witness: They were summoned, I understand, subpoenaed. Weren't they, all the records?

The Court: Did you intend to rely simply on the agent's testimony, Mr. Burrell?

Mr. Burrell: Not entirely, your Honor. I thought we had sufficient of the books. We put a subpoena on the proprietor of South Pacific for all of the records. Apparently not all of his records have been produced.

I still believe that the book of original entry of South Pacific here in the courtroom, would not its cash register show all the checks issued?

Q. (By Mr. Burrell): Then, Mr. Cummins, do you not have in this schedule and records an analysis as to the checks, check by check, and the drawer of the check, every check deposited which goes into the total amount which has been stipulated to?       A. I have.

The Court: Where is that schedule?

Mr. Burrell: In Respondent's P for identification.

The Court: Haven't you separated these items so [240] they can be offered one by one?

Mr. Burrell: You mean the original? We are referring now to deposits. Those would only be in the bank's records, your Honor.

(Testimony of O. E. Cummins.)

The Court: I am talking about this one item I am inquiring about, undeposited checks.

Q. (By Mr. Burrell): Do you have a schedule on that or detail on that, Mr. Cummins?

A. Yes. 1944, I have the schedule here for 1944; which item was it you wished?

Q. The thirty-thousand some odd hundred dollars of undeposited checks paid from South Pacific Wholesale Company to Mr. Sterns that you have added to the bank deposits—

The Court: Thirty thousand dollars is the figure for 1943. For 1944 the figure—these checks apparently are South Pacific's checks—is \$26,281.87.

The Witness: That, your Honor, consists of the following: On February 23, 1944—

The Court: May I ask you, do you have it there or not?

The Witness: The detail of it?

The Court: Yes.

The Witness: Yes, I do. That is what I was reading. [241]

The Court: Could you separate that piece of paper from your report?

The Witness: I don't know why I couldn't.

The Court: Do you have a similar sheet for 1943?

The Witness: Yes, I have.

Mr. Burrell: Just to point out, your Honor, there is a summarization in this schedule, Respondent's Exhibit P.

The Court: Speak up, for the record.

(Testimony of O. E. Cummins.)

Mr. Burrell: Yes. In Respondent's Exhibit P for identification, there is a schedule showing the detail on the undeposited checks from the South Pacific Wholesale Company for Mr. Sterns, for both of the years involved.

The Court: That gives me some idea about how you intend to proceed with Mr. Cummins' testimony. May I say to you now, Mr. Burrell, that it will no doubt eliminate a good many objections if you will arrange to have in court for examination by Petitioners' counsel the actual checks and books upon which you rely as proof of the existence of these amounts of money which you classify as income in each of these years.

If you are going to rely solely on the revenue agent's statement about his investigation and upon his summary report that he filed in his office as a result of the investigation, you will encounter the difficulty of not having direct evidence of any of the conclusions which the [242] agent drew from his examination.

Mr. Burrell: Your Honor, in some of these instances it is clear to me that that is the best we can do. I have issued and served a subpoena on the proprietor of South Pacific Wholesale Company, to bring in all his records relating to any transaction relating to Mr. Sterns.

The Court: He was here yesterday. You could have asked him yesterday to see the checks. The checks were here——

Mr. Burrell: I asked him if he had anything

(Testimony of O. E. Cummins.)

more, and he said no. Mr. Radke has been dealing, as he testified, with the South Pacific Wholesale Company for a period of years and gone through their books in great detail. Possibly he would know whether those checks are, what has happened to them. I can only rely on the proprietor's word that he doesn't have them.

Do you know?

Mr. Radke: No.

The Court: I will take a recess for a few minutes, as counsel wish to discuss another case.

(Short recess taken.)

Mr. Burrell: You Honor, might I have one minute, please?

The Court: Yes.

Mr. Burrell: Thank you, your Honor, for the time. I believe when we recessed, your Honor, we were discussing the particular matter of the year of 1943 of the sum thirty thousand five hundred some dollars of undeposited checks from South Pacific Wholesale Company, which Mr. Cummins at his investigation computed, and the sum of approximately \$26,000.00 in the year of '44. Is that correct?

First of all, the record shows we have subpoenaed duces tecum the proprietor of South Pacific Wholesale Company to bring in all records, and he has not produced the records which would evidence the payment to Mr. Sterns and his endorsement; the fact they are not deposited in these bank accounts.

Q. (By Mr. Burrell): Did you ever at any time



(Testimony of O. E. Cummins.)

ever see the original checks involved in this adjustment?      A. Yes, I did.

Mr. Reed: Objection.

The Court: Overruled.

Q. (By Mr. Burrell): Did you cause any of those checks to be photostated?      A. I did.

Q. Are any of those photostats here in court?

A. Yes.

Mr. Burrell: At this time I will hand to the Clerk certain photostatic copies of checks, the first group for the year 1943, to be marked for identification.

The Clerk: Q for identification. [244]

(The documents above referred to were marked Respondent's Exhibit Q for identification.)

Q. (By Mr. Burrell): Mr. Cummins, handing you this exhibit marked for identification as Respondent's Exhibit Q, I will ask you if these are photostats of the original checks of South Pacific Wholesale Company to Cy Sterns, undeposited checks for the year 1943?      A. Yes.

Mr. Burrell: I will offer these in evidence at this time.

The Court: Upon what do you base your conclusion they are undeposited?

The Witness: Because they do not appear in the taxpayer's bank account as deposits.

The Court: Most of these are endorsed by Mr. Sterns?

The Witness: That is correct.

(Testimony of O. E. Cummins.)

The Court: Could he have deposited cash in his account?

The Witness: He deposited thousands of dollars in his account.

The Court: Could he have cashed these checks and deposited the cash?

The Witness: I presume he could.

The Court: Could he have cashed a check for [245] \$10,000.00 and deposited \$5,000.00 in cash?

The Witness: He could. But the record doesn't indicate that.

The Court: It is a circumstantial item of evidence, is that right?

The Witness: Yes. You mean that it might have been cashed?

The Court: That none of these might have been deposited.

The Witness: They were not deposited as checks.

The Court: They were not deposited as checks.

The Witness: That is right.

The Court: That you have ascertained, but you can't ascertain whether any cash from these checks might have been deposited as cash?

The Witness: No. He may have cashed ten thousand and carried it around for a month and deposited the cash; I can't tell.

The Court: So to that extent these checks, Exhibit Q, would be offered as evidence that the checks themselves were not deposited because they don't show the stamp of a bank?

Mr. Burrell: Yes, your Honor.

(Testimony of O. E. Cummins.)

The Court: Which would appear if they had been deposited. [246]

Mr. Burrell: Yes, your Honor. They are offered for that limited purpose. That is satisfactory.

The Court: Mr. Reed, have you any objection to that?

Mr. Reed: I would like to see them.

The Court: Put a paper clip on those, please.

The Clerk: Yes.

Mr. Reed: Your Honor, some of these checks do have a series of stamps on them, indicating that they have gone through certain bank accounts. I am sure it is not proof that these were not deposited in the Petitioner's bank account.

The Court: Mr. Cummins, will you look at Exhibit Q again? Do those checks show a stamp of a bank which would show clearance through a bank?

The Witness: Yes, this check here shows it is cashed; the bank stamp right on it, "Cash."

Mr. Reed: Where is that?

The Witness: Right there (indicating).

The Court: Perhaps you should explain what marking on those checks leads you to conclude they were cashed and not deposited in Mr. Stern's bank account.

The Witness: This one is marked "Cashed" by the bank. This one is endorsed by some other party than Mr. Sterns, so it couldn't have been put in the bank deposits.

The Court: Who was it endorsed by? [247]

The Witness: J. J. Spanldy, S-p-a-n-l-d-y.

(Testimony of O. E. Cummins.)

This one here was cashed by Arene Perneti.

The Court: Who is he?

The Witness: The manager of South Pacific Wholesale Company.

This one here was deposited to South Pacific Wholesale Company.

This check was cashed at the Bank of America. The indication at the end of the stamp with 111, under the triangular stamp.

Mr. Reed: Pardon me. How do you determine that was cashed?

The Witness: By this number 111. The Bank of America has a schedule in which they stamp their checks 111 and it is a cashed check.

The Court: Go ahead.

The Witness: This check was deposited to South Pacific, also (indicating).

The Court: All right. Those are received in evidence as Exhibit Q.

(The documents heretofore marked Respondent's Exhibit Q were received in evidence.)

Q. (By Mr. Burrell): Mr. Cummins, did you make a detailed analysis and keep a written record of all the deposits of Mr. and Mrs. [248] Sterns for the two years here involved, and which deposits total the two amounts for the two years involved they have stipulated to? A. Yes.

Q. You have a detailed schedule which will add up to the penny the full amount?

A. That is right.



(Testimony of O. E. Cummins.)

Q. Do you have that here at the witness stand with you?      A. I do.

Q. Will you hand it to me, please?

Mr. Reed: Objection, your Honor.

The Court: I suggest you wait just a minute on that objection, until we find out what Mr. Burrell is going to do.

Q. (By Mr. Burrell): Do you have such a schedule in front of you at the witness stand, Mr. Cummins?      A. Yes.

Q. Do any of the checks in Respondent's Exhibit Q appear in your schedule on the deposits?

A. No, they do not.

Q. Do any of the checks which comprise the sum of thirty-five thousand five hundred some dollars as undeposited currency from South Pacific Wholesale Company to Mr. Sterns for the year 1943 appear on your records? [249]

The Court: Undeposited currency?

Mr. Burrell: He has designated it that way. I suppose it should be called undeposited checks.

The Court: What do you mean, currency or checks?

Mr. Burrell: I think that is my error. It should be undeposited checks.

Mr. Reed: Objection. I made effort to put Mr. Radke on the stand to testify from this report, a copy of which I had furnished Respondent.

The Court: Let's stick to your objection to this, please. What is your objection to this, Mr. Reed?

Mr. Reed: I believe it calls for a conclusion of

(Testimony of O. E. Cummins.)

the witness. It is not the best evidence. This was objected to previously because the books were the best evidence.

The Court: We are finished with that item, if you please. Your objection to this is—you have stated what your objection is?

Mr. Reed: That is not the best evidence.

Mr. Burrell: Your Honor, I haven't put in a document. This gentleman is testifying from his memory, as to the results of his investigation. He can cross examine.

Mr. Reed: He is testifying as to what redeposits and deposits were.

Mr. Burrell: Not at this moment he isn't.

Mr. Reed: Please, what was the question? [250]

The Court: How could you tell, Mr. Cummins, whether any of these checks, Exhibit Q, which I think is what we are referring to, were deposited in Mrs. Sterns' or Mr. Sterns' bank account during 1943.

The Witness: Because I went to the banks, and I secured copies of all deposit tickets with the details that made up each individual deposit each day, that there was a deposit.

On those deposit tickets is listed what we call an A. B. A. number, which indicates the bank on which that check is drawn. I took these checks——

The Court: Who puts those numbers on?

The Witness: Mr. Sterns or whoever makes the deposit in the Sterns account.

The Court: Whoever makes the deposit?

(Testimony of O. E. Cummins.)

The Witness: That is right.

The Court: That is the little clearing house number?

The Witness: That is correct.

The Court: On Exhibit Q, on a check for \$10,000.00, December 3, 1943, is a small number at the left, 90-984. That is the number of what bank?

The Witness: The Hollywood State Bank.

The Court: So in looking at the deposit slips, you mean to say you didn't find an identification for a deposit that would be 90-984, \$10,000.00? [251]

The Witness: That is correct. It is not in the bank account. Neither as \$10,000.00 or as identified by the A. B. A. number.

The Court: All right. Now, that is this witness' sworn testimony. He gives that from making an examination of the records. You may of course cross examine him. The objection is overruled.

Mr. Burrell: At this time I will hand to the Clerk for identification the Respondent's next in order, photostats of checks.

The Clerk: Exhibit R for identification.

(The documents above referred to were marked Respondent's Exhibit R for identification.)

Q. (By Mr. Burrell): I will hand this group of checks, Respondent's Exhibit R for identification, to you, Mr. Cummins, and ask you what they are.

A. They are all South Pacific Wholesale Company's checks.

The Court: For what year?

(Testimony of O. E. Cummins.)

The Witness: 1943.

Q. (By Mr. Burrell): Are you certain it is 1943, Mr. Cummins?

A. Yes. There are some checks there for 1943.

The Court: There are some '44 there. I thought [252] you had segregated those and put all the '43 checks together and the '44 checks.

Mr. Burrell: I thought we had too, your Honor. I am sorry. Your Honor, I am sorry, I have made an error in picking up the wrong group of checks from my desk. I do not wish to have marked the same group I handed to the Clerk a moment ago for identification. May that be stricken out, your Honor?

The Court: You can strike that stamp.

The Clerk: Stricken.

Mr. Burrell: I will hand to the Clerk at this time a group of photostatic checks and ask it be marked for identification.

The Clerk: I will mark this Exhibit R for identification, in lieu of the other group.

Q. (By Mr. Burrell): I will hand you this group of checks and ask you what they are.

A. They are also South Pacific Wholesale Company's checks made payable to Cy Sterns for the year 1944.

Q. Have these checks been deposited in the accounts of Mr. Sterns, as shown by your investigation? A. Yes, they are.

Mr. Burrell: I will offer this exhibit in evidence, your Honor. [253]

The Court: I suppose if they weren't deposited,



(Testimony of O. E. Cummins.)

the answer ought to be no, they weren't deposited, instead of yes, they are. What do you mean to say?

The Witness: 'They were not deposited.

The Court: All right. Let's just go through this carefully, as we did with the rest. How are those checks endorsed?

The Witness: There is one for \$8,522.70, endorsed, payable to Cy Sterns, endorsed Cy Sterns, and went to South Pacific Wholesale Company.

Check dated February 2, 1944, for \$4,800.00, endorsed by Cy Sterns at the Bank of America, at the exchange cashier's check window. It was not deposited.

February 3, 1944, payable to Cy Sterns for \$585.50, endorsed Cy Sterns. This was also used at the cashier's exchange window.

The Court: What bank?

The Witness: Bank of America.

February 22, 1944, check for \$1,015.50, endorsed Cy Sterns, cashed at the Bank of America.

3-17-44, check to Cy Sterns for \$33.60, endorsed Cy Sterns. It was cashed at the Bank of America and has the notation of reimbursement "for telephone."

A check for \$1,500.00, dated March 17, 1944, endorsed by Cy Sterns, cashed at the Bank of America. [254]

3-18-44, check to Cy Sterns in the amount of \$2,702.27, and endorsed by Cy Sterns, and the bank stamp is so low I can't tell what department it was used in or if it was cashed. But it is not in the deposits.

(Testimony of O. E. Cummins.)

March 23, 1944, check to Cy Sterns for \$849.30 and cashed at the Hollywood State Bank and endorsed by Cy Sterns.

July 28, 1944, a check payable to Cy Sterns in the amount of \$1,000.00 and endorsed by Cy Sterns and A. Perneti, and deposited to Perneti's account in the Hollywood State Bank.

Mr. Burrell: I offer those in evidence, your Honor.

Mr. Reed: Objection, your Honor. The best evidence of what those checks were transferred for is not being given. Mr. Cummins is stating his conclusions as to the purpose for which those checks were used.

The Court: No, he is not. He is stating what the checks themselves show.

Mr. Reed: Very well.

The Court: He has been reading from the checks. The objection is overruled. They will be received as Exhibit R.

(The documents heretofore marked Respondent's Exhibit R were received in evidence.)

Q. (By Mr. Burrell): Mr. Cummins, you have testified earlier that, I [255] believe, the next item of addition to income that you made in your computations was an item of some eighty-eight thousand dollars of other currency used, and not indicated or shown in the bank deposits, is that correct?

A. That is correct.

Q. Explain in your testimony, as a result of your

(Testimony of O. E. Cummins.)

investigation what comprises that sum, what it is made up of?

A. Well, the first item on the list is a cashier's check No. 7866, purchased by Mr. Sterns with currency, in the amount of \$27,112.00, payable to South Pacific Wholesale Company.

The Court: What is the date of that?

The Witness: 10-19-43.

The Court: \$27,112.00 even?

The Witness: That is right.

The Court: Let's take that item for a minute. Your investigation is that on October 19, 1943, Mr. Sterns bought a cashier's check for \$27,112.00?

The Witness: That is correct.

The Court: And you are interested at this point where he got the money, are you?

The Witness: I only know he used cash to purchase it.

The Court: You know he used cash to purchase it. You treat this as an item of cash, which must be included in [256] gross income?

The Witness: Not until the cashier's check is purchased.

The Court: That is correct.

The Witness: That is correct, yes.

The Court: Cashier's check is purchased with cash.

The Witness: That is correct.

The Court: Under the group of checks, Exhibit Q, there were some checks cashed of South Pacific,

(Testimony of O. E. Cummins.)

that were cashed. Those had been included in gross income?

The Witness: That is correct.

The Court: How can you be sure that you wouldn't be making a duplication?

The Witness: I am not sure.

The Court: You are not sure?

The Witness: Whenever a check is converted into cash we cannot follow it. There is no way of following it. I am not saying there isn't a duplication.

The Court: All you can say is you found in your investigation that the cashier's checks were purchased?

The Witness: That is right. And cash was used to purchase them.

The Court: How did you locate that information?

The Witness: From the bank's records. I have a copy of the application for cashier's check, and that application [257] shows the funds used, the bank shows that on the application.

The Court: It shows that cash was used?

The Witness: Yes.

The Court: Are those in the courtroom here?

The Witness: Yes.

The Court: Then you made up a schedule, I suppose, you are reading from.

The Witness: Yes.

The Court: Of course, I don't want to take the time to have you read that into the record, but if that is the only thing you can do, I guess that is the only thing you can do.



(Testimony of O. E. Cummins.)

The Witness: I would like to indicate here that this \$27,112.00 is in the same transaction, used as a part of the purchase price of liquor, paid to South Pacific, because the check was payable to South Pacific. In other words, in effect, what took place, he took \$10,000.00 in cash and gave to South Pacific for payment of some liquors; instead of giving South Pacific \$10,000.00 he goes and buys the cashier's check and gives South Pacific the cashier's check.

The Court: How many of these items are there where cashier's checks were purchased, three or four?

The Witness: There were four in '43.

The Court: We are just concerned with 1943.

The Witness: That is right; three more. [258]

The Court: The total was \$88,801.70.

The Witness: No. This is included in that; two other items.

The Court: They are not cashier's checks?

The Witness: That is right. We have a telegraphic transfer of \$25,000.00 to Mrs. Sterns in San Francisco, in which cash was used.

The Court: Go ahead then with your testimony. You are going to describe the cashier's checks, I believe.

The Witness: On 11-13-43 there was a cashier's check purchased for \$31,315.86, cashier's check No. 8324, payable to South Pacific Wholesale Company. This cashier's check was paid for by the following method: Cy Sterns' check in the amount of

(Testimony of O. E. Cummins.)

\$13,835.86, drawn on his personal bank account, and currency in the amount of \$17,480.00; that makes it.

The Court: What is your next item?

The Witness: 11-16, a cashier's check in the amount of \$21,370.00, cashier's check No. 8271, payable to Cy Sterns.

Used in the purchase of that cashier's check, a check of Cy Sterns' in the amount of \$12,000.00, drawn on his personal bank, and \$9,370.00 in cash.

On 12-15, cashier's check for \$10,000.00, cashier's check No. 8570, payable to South Pacific Wholesale Company. This was purchased by Cy Sterns' check in the amount of [259] \$3,000.00 and \$7,000.00 in cash.

On 12—that is not one of the cashier's checks. Cancel that.

There is a total of \$2,839.70, which is made up of cash refunds that Mr. Sterns made to customers on deposits.

The Court: How do you know that?

The Witness: I know that for the reason that Mr. Sterns furnished me with receipts showing that these were returned. And I interviewed the people who he said he refunded it to, and I found the money had been refunded.

The Court: These are receipts of the payees of the cash, that were given to Mr. Sterns and he had kept them and he showed them to you, is that it?

The Witness: The receipts, that is right.

The Court: John Jones would give him a receipt for certain cash refunds?

(Testimony of O. E. Cummins.)

The Witness: Yes. He would go out and get a deposit from a liquor dealer and couldn't furnish the liquor. So then Mr. Sterns would return that money to this liquor dealer and take a receipt for it.

So he gave me a list of these receipts and those that I could verify from contacting the person to whom he returned it—allowed that—and picked up from income, because this cash had to come from some other source. It wasn't the same cash. [260]

The Court: That is your conclusion.

The Witness: That is my conclusion.

The Court: Did he give you any receipts for refunds where you weren't able to identify them?

The Witness: He did.

The Court: Where you weren't able to identify the person?

The Witness: He did.

The Court: How many receipts for refunds did he give you for 1943, if you can remember?

The Witness: I think there was about ten; may have been fifteen. But part of those were refunds by check, so I didn't have to contact the retailer.

The Court: Well, all right. Now, what is the next item?

Q. (By Mr. Burrell): Mr. Cummins, the items you have just read are cashier's checks going into the sum of eighty-eight thousand some odd dollars. Are there any other items of income in that sum of eighty-eight thousand which you have not read?

A. Yes, on 12—

(Testimony of O. E. Cummins.)

Q. Are there just a few of them?

A. Just one.

Q. Read it.

A. On 12-3-1943 there was a telegraphic transfer to [261] Mrs. Cy Sterns at San Francisco, in which \$25,000.00 cash was used as a transfer.

Q. Is that the same item Mr. Sterns testified to on his direct examination?

A. That is right.

Q. Now, you have read——

The Court: Where did he get that \$25,000.00?

The Witness: I arrived at the conclusion it was from sales he made.

The Court: Why do you arrive at that conclusion?

The Witness: Because I visited practically all the retailers and I have affidavits from these retailers, at least 85 per cent of them, and they all paid over ceiling payments.

Mr. Reed: I object to such testimony, your Honor. It is really the opinion of the witness. It really isn't the best evidence of what took place.

The Court: I think I will have to strike that testimony of yours. You apparently misunderstood the Court's question, and therefore it wasn't responsive to the question.

I didn't ask you what the source of that money was, in that sense. I had asked you before whether you could say definitely whether an item of money was drawn out of his bank account.

The Witness: Yes. [262]



(Testimony of O. E. Cummins.)

The Court: How would you know whether or not this \$25,000.00 that was sent by telegraph was or was not drawn out of his bank account?

The Witness: Because I had a transcript of all of his checks on the bank account. I have that here.

The Court: Well, the bank doesn't show the payees. The bank records don't show the payees of the check, do they?

The Witness: Cashier's?

The Court: Of checks, just checks. Is this a cashier's check, this \$25,000.00.

The Witness: That was a telegraphic transfer to San Francisco to Mrs. Sterns.

The Court: You simply take \$25,000.00 in cash and give it to the telegraph company.

The Witness: Yes, that is right.

The Court: Can you tell where that \$25,000.00 came from?

The Witness: No, I can't tell where it came from.

The Court: Can you be sure that that \$25,000.00 isn't duplicated in these uncashed checks from South Pacific, that come to a total of \$30,599.00?

The Witness: Except by dates. I would have to take the dates there and match them up. I don't believe they would total the twenty-five that way. I have no way of telling. [263]

The Court: All right. Go ahead now. Does that take care of Exhibit R?

Mr. Burrell: Of R, I believe it does.

(Testimony of O. E. Cummins.)

The Court: Or are these checks you wanted, \$88,801.70, explained?

Mr. Burrell: Yes. It takes care of that item.

The Court: Have you finished?

Mr. Burrell: Yes.

The Court: Those relates to 1943.

Mr. Reed: Do you have a copy for us to look at?

The Court: Ordinarily you don't furnish that. We have a fraud issue here, and this is a revenue agent's report. Until this is offered in evidence, I don't suppose it is customary for Respondent's counsel to hand over a copy of the agent's report. I have never seen that done.

Mr. Burrell: The schedules which Mr. Cummins has in front of him at this moment and testifying from are the same as Respondent's Exhibit P for identification, and handed to Mr. Reed yesterday morning. He has been furnished all the time he wished on them.

Mr. Reed: Mr. Burrell, that was handed to me yesterday morning when I was very busy. I asked if you had a copy I could take home, and you said you only had the one copy. I had never seen it before.

Mr. Burrell: May I have this copy? [264]

The Court: Yes.

Q. (By Mr. Burrell): I believe you have now given your testimony as to your investigation and computations of all the items of income for the year '43.

(Testimony of O. E. Cummins.)

The Court: You are now looking, Mr. Reed——

The Witness: Except the deductions.

The Court: ——at a copy of the revenue agent's report for 1943.

Mr. Burrell: Schedule 1.

The Court: You have been furnished that?

Mr. Reed: Yes.

The Court: Now, what page have you been reading from in that report?

The Witness: They are not numbered.

The Court: What is the caption over what you have been reading?

The Witness: Schedule 1.

The Court: The witness has been reading from Schedule 1.

Q. (By Mr. Burrell): Turning your attention now to the year 1944 in Schedule 1 of Respondent's Exhibit P for identification, just for review, what is the total amount of bank deposits shown? [265]

A. \$76,088.91.

Q. What adjustments have you made to that figure in income? What additions have you made to that figure of income?

A. Just the additions?

Q. Yes. What additions of income have you made to that figure?

The Court: You added checks in the amount of \$26,281.87, to get you started again. Were those checks to South Pacific?

Mr. Burrell: They are Respondent's Exhibit R, your Honor, previously discussed.

(Testimony of O. E. Cummins.)

Q. (By Mr. Burrell): Are there any other additions of income in 1944?

A. Undeposited currency.

Q. Explain that item. Does that appear in one of the schedules you are now referring to?

A. Yes, it does.

Q. Name the schedule for Mr. Reed.

A. Schedule No. 7. On February 3, 1944, there was purchased by Mr. Sterns a draft for \$20,000.00, payable to some Cuban company. It is an exhibit here, the draft to Cuba. And Mr. Sterns used his personal check of \$396.75 and currency in the amount of \$14,217.75 for that.

On February 23, 1944, Mr. Sterns deposited into an [266] escrow, Escrow No. 1486, Citizens National Bank, \$12,560.00 in currency.

Q. Is that the total of it, Mr. Cummins?

A. That is the total.

Q. We have now discussed all the items of income for both the years, have we? A. Yes.

Q. Now, let's turn our attention to offsets against incomes for the year 1943. What credits did you give to Mr. Sterns against the income for that year?

A. I am looking at Schedule 8.

Q. The year 1943, what is the total amount of the items? A. \$29,564.70.

Q. What is that item? Describe it.

A. That item is cash refunds to customers in the amount of \$2,839.70, and total refunds by way of



(Testimony of O. E. Cummins.)

Cy Sterns' personal checks, \$29,564.70. The details are here, if you want them read.

Q. Are there further adjustments to income in the year '43, by reason of your investigation and analysis of transfers, redeposits, loans, so on?

A. Income was reduced on account of cost of merchandise, that is, payments for merchandise.

Q. I haven't come to that yet. Can you answer my [267] question, first? Have you also reduced the total amount of bank deposits, as the result of an analysis for transfers, redeposits and loans, and so forth?

A. I have.

Q. What amount? A. \$42,921.50.

Q. Is there a schedule to this exhibit showing that in detail? A. Yes, Schedule 3.

Q. It shows every one of those items in detail, does it? A. Yes.

The Court: Again, what is this for?

The Witness: Transfers, loans and other known item deposits in his bank account.

The Court: Known income?

The Witness: Deposits.

The Court: Deposits?

The Witness: Yes.

Q. (By Mr. Burrell): Have you made any allowance in your investigation and analysis for cost of goods purchased by Mr. Sterns?

A. Yes.

Q. In what amount for the year 1943?

A. \$97,637.91.

(Testimony of O. E. Cummins.)

Q. Do these schedules have a detailed analysis of that? [268]

A. They do; Schedule No. 7.

The Court: Now, I ask here whether the cost of merchandise sold agrees with Petitioner's cost?

The Witness: No.

Mr. Burrell: I doubt whether it does. No, I am sure it doesn't.

Mr. Reed: Your Honor, the books are here. They indicate the purchases in 1943 by South Pacific, on behalf of Mr. Sterns, for \$183,219—pardon me. That is the sales. I am sorry.

The Court: This is cost of sales, which would be an offset against receipts from sales?

Mr. Reed: The total purchases less the inventory at the end of the year—

The Court: Let me interrupt you again, now, if you will, please. You have in Exhibit 11, I believe, prepared cost of goods sold?

Mr. Reed: Yes.

The Court: And Respondent's counsel had no objection to that, I believe. Isn't that right?

Mr. Burrell: I had no objection to the testimony that Mr. Radke gave at that time.

The Court: Let's cut through it, gentlemen. You know what the Court is getting at.

The Petitioner has a figure of cost of goods sold. [268-A] Your agent has computed a figure of cost of goods sold.

Now, the simple question is, how far apart are you?

(Testimony of O. E. Cummins.)

Mr. Reed: Approximately \$60,000.00 for the year 1943.

The Court: Where do you stand, Mr. Reed? Is your figure of cost of goods sold higher than the agent's figure?

Mr. Reed: Yes, your Honor.

The Court: Now, where did you get your figures on cost of goods sold, Mr. Cummins?

The Witness: I got mine from Mr. Sterns' bank accounts and cashier's checks delivered to South Pacific, and South Pacific paid for all the liquor themselves. Sterns didn't pay for the liquor, except through the accounting that South Pacific made with respect to income due to Sterns.

The Court: Why wouldn't South Pacific records of liquor sold to Mr. Sterns be your first point of inquiry? It would invoice Mr. Sterns for liquor——

The Witness: No.

The Court: Wouldn't it?

The Witness: It invoices South Pacific, and South Pacific paid for it.

The Court: Do we understand? Are we talking about the same thing.

The Witness: Yes, your Honor.

The Court: South Pacific, as I understand it, [269] handled liquor for Mr. Sterns.

The Witness: It was all invoiced to South Pacific and South Pacific issued their checks for it. Mr. Sterns didn't pay it.

The Court: We are talking about entirely different things.

(Testimony of O. E. Cummins.)

The Witness: No, same liquor.

Mr. Burrell: I believe the answer is yes to your Honor.

The Court: The answer to my question is yes?

Mr. Burrell: We are talking about different things when we discuss his figure for cost of goods sold and our figure for cost of goods sold; we are talking about different things. Is there any further clarification needed?

The Court: No. That answers my question. This figure of the agent for cost of goods sold is different than in the figure in Exhibit 11.

Q. (By Mr. Burrell): Make a brief explanation how you arrived at the figure of \$97,000.00 for cost of goods sold, for which you gave Mr. Sterns a credit against income in 1943.

A. I gave him credit for all the moneys he turned over to South Pacific in settlement of liabilities for liquors or any other transactions he might have had with South Pacific.

Q. Did your investigation—— [270]

The Court: That is a conclusion. You say you gave him credit for all the moneys he paid over to South Pacific. Are you absolutely sure that the figure you have represents all that Mr. Sterns paid over to South Pacific?

The Witness: According to South Pacific's books and according to Sterns' bank account. That is the only way I have——

The Court: We will straighten this out in a re-



(Testimony of O. E. Cummins.)

cess. There is something off there. Go ahead. What is your next question?

Mr. Burrell: May I refer to Exhibit P for a moment?

The Court: Offsets against income. Payments to South Pacific could be one offset. What is the next offset?

Q. (By Mr. Burrell): Did you give him any offsetting credit for refunds which you could identify?

A. Yes.

Q. How much is that amount in 1943?

A. \$29,564.70.

Q. Now, directing your attention to the year 1944, what credits or offsets against income did you make in that year? A. For refunds?

Q. Give that figure first.

A. \$10,140.00. [271]

Q. Did you make any credit or offset for cost of goods purchased in that year? A. Yes.

Q. How much? A. \$45,695.65.

Q. By taking the bank deposits, the gross bank deposits, adjusting it for the transfers, redeposits, loans, and et cetera, which you have testified to, by further reducing that figure by the amount of refunds and the cost of goods purchased, which you have testified to, then by adding to it the undeposited checks from South Pacific Wholesale Company and the other currency which you used—did not go through his bank deposits—you have arrived at a final figure of net taxable income for each of the two years, is that correct?

(Testimony of O. E. Cummins.)

A. That is true.

Q. Mr. Cummins, does Respondent's Exhibit P for identification correctly and accurately set forth your testimony as to the results of your investigation? A. It does.

Mr. Burrell: I will offer it in evidence at this time, your Honor.

Mr. Reed: Objection, your Honor.

The Court: Has it been marked?

Mr. Burrell: It has been marked, your Honor.

The Court: It is P for identification. For the [272] present the objection is sustained.

Now, P relates to the year 1943, is that right?

Mr. Burrell: No; both years.

The Court: What else have you?

Mr. Burrell: Would it be convenient for your Honor to take a short recess?

The Court: I want to know approximately how much more you have .

Mr. Burrell: Very little.

The Court: Then you will be ready for cross examination?

Mr. Burrell: Yes.

The Court: All right.

(Short recess taken.)

Q. (By Mr. Burrell): Mr. Cummins, you have testified that in the year 1943 you allowed as an offset against income the sum of approximately \$97,000.00, is that correct? A. That is correct.

Q. Are there very many items entering into that sum? A. About eight.

(Testimony of O. E. Cummins.)

Mr. Burrell: I would like to have them identified and read into the record, your Honor.

The Witness: On 10-19-1943 Mr. Sterns bought a cashier's check, No. 7866, in the amount of \$27,-112.00, which [273] was given South Pacific and deposited in their bank account, which was allowed as costs, purchase of liquor or whatever you called it in settlement of their agreement.

On 11-13-1943 he also purchased a cashier's check in the amount of \$31,315.86, cashier's check No. 8324.

The Court: You don't have to read the number at the present time. It takes too much time.

The Witness: This was allowed as a deduction, cost of merchandise.

The Court: And went to South Pacific?

The Witness: Yes. On 12-1-43 Cy Sterns' check in the amount of \$6,182.55, went to South Pacific. That was allowed as a cost of merchandise.

On 12-1-43 a check for \$9,000.00 by Cy Sterns to South Pacific Wholesale Company, allowed as cost of merchandise.

On 12-2, taxpayer's check for \$3,517.50, allowed as cost of merchandise.

12-15, cashier's check for \$10,000.00, payable to South Pacific Wholesale Company, allowed as cost of merchandise.

On 12-7-1943 taxpayer's check for \$510.00 to South Pacific Wholesale Company, allowed as cost of merchandise.

On 12-30, cashier's—taxpayer's check for \$10,-

(Testimony of O. E. Cummins.)

000.00, allowed as cost of merchandise. Making a total [274] of \$97,637.91.

Q. (By Mr. Burrell): And for the year 1944?

A. 1944, on January 13th taxpayer's check in the amount of \$6,000.00 to South Pacific Wholesale Company, allowed.

On January 25th taxpayer's check for \$14,000.00 to South Pacific Wholesale, allowed as a cost of merchandise.

On February 3, 1944, a draft payable in Cuba to some Cuban corporation for \$20,000.00, as a deposit on liquors, allowed as cost of merchandise.

Q. Mr. Cummins, is that the same item with respect to which Mr. Sterns testified that he had a loss of \$20,000.00 in some money he sent to Cuba?

A. Yes, that is the same item.

Q. Thank you. Go ahead.

A. On 2-17, taxpayer's check for \$1,265.20 to South Pacific Wholesale, allowed.

The Court: How much is that?

The Witness: \$1,265.20. On 2-18, \$1,292.45, taxpayer's check, allowed.

On August 5th, taxpayer's check for \$3,138.00 to South Pacific Wholesale, allowed as cost of merchandise, and that makes a total of \$45,695.65.

Mr. Burrell: May I ask your Honor whether any of the schedules in Respondent's Exhibit P marked for identification [275] will be helpful to your Honor in her record, if they are introduced solely as schedules and memorial of his testimony. He has



(Testimony of O. E. Cummins.)

testified to may of the figures and all the totals in this exhibit. It really has served my purpose.

The Court: I will let you know after you get finished.

Mr. Burrell: I am finished with this testimony, as to these schedules. That is all of the direct examination of Mr. Cummins.

The Court: Does Respondent rest?

Mr. Burrell: Respondent rests.

### Cross Examination

Q. (By Mr. Reed): Mr. Cummins, in your cost of goods sold I believe you allow Mr. Sterns a \$20,000.00 item that represented a telegram that went to Cuba.

The Court: Mr. Reed, may I interrupt, please? Let's not take up time with the de minimis or minor items. If that were considered as either a loss or a cost it would be an offset to income.

Now, why don't you direct your questions to the substantial or main things here and take up the little things at the end?

Mr. Reed: Your Honor please, the schedule we put in evidence in Exhibit 11 showed total purchases for 1943 of [276] \$222,259.77 on page 15. That is still not including the \$20,000.00 item Mr. Cummins gave us or treated as a purchase. So that leaves——

The Court: As I say, that is a little item. If we were getting down to auditing this thing down to

(Testimony of O. E. Cummins.)

the penny, we would have to consider it. You pointed out that. Now, go on to something else.

Q. (By Mr. Reed): Mr. Cummins, I believe you stated you commenced the investigation of Mr. Sterns early in '45, in late '45 or early '46.

A. To the best of my recollection.

Q. When did you first learn the Petitioner was without assets?

A. I haven't learned that yet.

Mr. Reed: Please mark this Petitioners' exhibit.

The Clerk: Exhibit 17 for identification.

(The document above referred to was marked Petitioners' Exhibit No. 17 for identification.)

Q. (By Mr. Reed): I hand you Petitioners' Exhibit 17 for identification and ask you if you did not receive the original of that.

A. The first time I saw this was in your office about three weeks ago.

Mr. Burrell: What is your answer then to his question, [277] Mr. Cummins? Would you prefer to have the reporter read it back?

The Court: Go ahead.

Mr. Burrell: He asked you whether or not you received the original of what he handed you.

The Witness: I never did receive the original.

Q. (By Mr. Reed): I don't recall you being in my office three weeks ago.

A. I said approximately three weeks ago. It was during conferences—it was in Mr. Burrell's office.

(Testimony of O. E. Cummins.)

Q. Where is my office? Let's get this straight now.

A. Mr. Burrell's office, and you were present; so was Mr. Radke.

Q. I believe you stated at one time that you had a conference with Mr. Sullivan before you began the fraud investigation of Mr. Sterns. You first investigated Mr. Sterns and set up a deficiency of \$170,000.00. You had no conference with Mr. Sullivan, assistant revenue agent in charge?

The Witness: Read the question, please.

Q. (By Mr. Reed): Did you have a conference——

A. No, I did not.

The Court: What is the materiality of this, please? [278] Are you laying a foundation for something?

Mr. Reed: I am trying to prove through this witness he had knowledge this Petitioner was without assets in the year 1944. That he closed the year heavily in debt as a result of his business operations; just had no net worth. It was a deficit.

The Court: He testified he began the investigation in late '45 or 1946.

Mr. Reed: That is true.

The Court: Read the question, please.

(The question was read.)

The Court: Did you or didn't you?

The Witness: No, I did not.

Q. (By Mr. Reed): Mr. Cummins, did you not state——

The Court: To whom?

(Testimony of O. E. Cummins.)

Q. (By Mr. Reed): Do you recall a conference when Mr. Burrell and Mr. Pierce were present?

A. I recall two or three conferences.

Q. And I was also present?

A. Yes, you were present.

Q. Did you not state at that conference that the Government would never get a nickel out of this taxpayer? A. I did not. [279]

Q. Isn't it true, Mr. Cummins, you have adopted what you call this bank deposit theory, and you knew very well the net worth theory would show a deficit in earnings for 1943 and '44? A. No.

Q. Mr. Cummins, you had Oscar Ross' books?

A. Yes.

Q. You prepared a transcript of those books?

A. No, sir.

Q. At this same conference I refer to, did you not make the statement that, when I stated to you Mr. Sterns owed Oscar Ross \$32,000.00 on December 31, 1944, did you not state substantially this: "The books showed he owed \$32,000.00, but I have gone over those books and I will show you where that was over ceiling profits, and that is the way they set it up"?

A. No, sir, I didn't state that.

Q. You did have Mr. Ross' books?

A. I did; examined Mr. Ross' books.

The Court: Your questions, of course, seem to go outside the direct examination.

Mr. Reed: Yes, your Honor, but candidly I am trying to impeach the witness for this reason: We



(Testimony of O. E. Cummins.)

subpoenaed Oscar Ross and his books. We had trouble locating him. He dodged us and he came in here as an unfriendly witness to [280] Mr. Sterns. I attended a conference in the Bureau office——

The Court: If you are going to take the stand later or ask to take the stand later and testify under oath, that is one matter. But I simply point out that——

Mr. Reed: We will pass it then.

The Court: ——this cross examination has nothing to do with the direct examination of this witness.

The Witness: I could very well clarify this matter if it is desired. I know what I stated. What I did on Mr. Ross' books, I didn't make a transcript of the books.

Q. (By Mr. Reed): Mr. Cummins, you testified about this undeposited currency. Could that not have been withdrawn previously from the bank.

A. I didn't quite understand.

Q. The undeposited currency that you testified to, could that not have been withdrawn previously from the bank?

A. I would have no way of telling that. I will state this, that I couldn't identify any cash checks of similar amounts or at similar times in these amounts.

Q. Then in order for your theory—in arriving at the Petitioner's net income, then it is by your own admission that it is likely to be inaccurate. your theory?

(Testimony of O. E. Cummins.)

A. I don't believe there is any report that is accurate. I believe we all make errors; we make mistakes. [281] I can't claim that is full proof; I did the best I could.

Q. In 1943, show me in that exhibit where you allowed this Petitioner any expenses for office, lights, telephone, salesmen, et cetera.

A. I didn't allow any.

Mr. Reed: Your Honor please, I just don't know how to conduct this case on one point here. We have canceled checks exceeding what Mr. Cummins has allowed. We also have receipts for these refunds in excess of what he has allowed. I don't like to take the time to take each check and——

The Court: If you have rebuttal evidence you should introduce it, no matter how much time it takes. That is part of your duty.

Q. (By Mr. Reed): Didn't Mr. Sterns appear before you at your office? A. No, sir.

Q. I believe you testified that Mr. Sterns was uncooperative——

The Court: I don't recall that.

The Witness: I don't think I did. If I did, I didn't intend to.

Q. (By Mr. Reed): That he didn't turn over his records to you.

A. I stated I believe he turned over his canceled checks and said he had no records other than canceled checks [282] and a few receipts. That is all I ever saw of Mr. Sterns' until this black book appeared.

(Testimony of O. E. Cummins.)

The Court: You mean to say that an exhibit we have here, a black book, which is Exhibit G, wasn't shown to you?

The Witness: No.

The Court: When you asked for some records?

The Witness: No.

Mr. Reed: May I see that exhibit?

The Court: That is P for identification.

Q. (By Mr. Reed): Mr. Cummins, do I understand correctly this total sum, treated as income, this \$30,000.00——

Mr. Burrell: It is the total amount of a group of checks on Schedule 6.

The Witness: Yes, that has been added to income.

Q. (By Mr. Reed): May I ask you how you could call refunds, loans, exchange, commissions income?

A. Mr. Sterns received them. That is the only way I know of.

Q. Are loans income?

A. The first check made payable to H. P. Hanthorn, he was using the name Hanthorn in various transactions.

Q. Clarify that. He was using the name Hanthorn?

A. Yes. I come on to this refund and traced it down [283] and found out this check was endorsed by Perneti. Perneti in a sworn statement said he cashed the check and gave the cash to Cy Sterns.

(Testimony of O. E. Cummins.)

Q. Why do you designate them refunds and exchanges, and include them on income?

A. That is on South Pacific's books.

Q. We have South Pacific's books here. Please show me where that is.

A. I can show that to you. Here is a check, the first one on the book, on this page No. 102.

Q. Please read it.

A. Check No. 1017, "H. P. Hanthorn loan \$2,-908.74."

The Court: That is on the books of South Pacific?

The Witness: Yes. And then by journal entry at a later date they took this item, along with many others, and included it in refunds.

Q. (By Mr. Reed): I don't understand that, where that would be refunds. You haven't clarified the use of the name Hanthorn.

A. If Cy Sterns got the money we called it income.

Q. Even though the books showed it was a loan?

A. Because he was on a bank deposit basis. You can't depend on what the books say, because Perneti said it was part of Mr. Sterns' commission.

Q. Where is Perneti? Why didn't you have him in here? [284]

A. Don't ask me that.

Q. You have an item there marked H. P. Hanthorn. It apparently has no connection with Cy Sterns, and yet you charge it into his income.

A. Yes.



(Testimony of O. E. Cummins.)

Q. It is marked as loan. Mr. Cummins, did you verify very recently whether or not Mr. Sterns was in the County Hospital? A. I did not.

Q. In your analyses, how did you arrive at the amount of commissions South Pacific paid to Mr. Sterns?

A. I didn't arrive at the amount of commissions. I arrived at the bank deposits plus items received, and converted into cash. I didn't arrive at any such thing as a commission.

Q. You have South Pacific's books, the invoices. They are in evidence as exhibits. That showed all the purchases of the liquor that Cy Sterns handled through South Pacific, and yet you came up with such a great difference in your liquor purchases that you allowed him. It is confusing, I am sure, to everyone, as to how there can be such a great discrepancy between your figures and the books. I wish you would explain how you arrived at that figure from the books.

A. I didn't arrive at that figure from the books. I arrived at it from bank deposits and drawings from bank deposits. [285]

The Court: May I suggest this: Perhaps I can get it through a question.

When you used the bank deposit method for reconstructing income, you regarded all receipts as "income," is that right?

The Witness: Except cash. We only picked up cash where it was extended for something that was an asset, like a cashier's check.

(Testimony of O. E. Cummins.)

The Court: Then in dealing with offsets against what you call gross receipts, under this method, what do you use for offsets, just cash disbursements?

The Witness: Well, anything that Mr. Sterns paid to South Pacific to reimbursement them for any shortage they may have between sales and the cost of sales, as reflected on their books. To put it another way, Cy Sterns didn't pay for any of this liquor except through checks he advanced to South Pacific to settle the account between them, according to their agreement. South Pacific's checks paid for every invoice of liquor that was purchased.

The Court: South Pacific, you say that your examination showed that South Pacific would pay a distributor, for instance, the people who distribute Rocky Springs whiskey, the Old Monastery Company, South Pacific would pay Old Monastery Company for the whiskey they would send South Pacific? [286]

The Witness: That is correct.

The Court: Then South Pacific would make deliveries to certain customers that Mr. Sterns would bring in.

The Witness: That is right.

The Court: And some of those customers would make payments to South Pacific, is that right?

The Witness: Yes. Probably 90 per cent of them were paid. They used that fund to reimburse them for the cost.

The Court: Just a minute. For this moment I

(Testimony of O. E. Cummins.)

am asking questions. Don't let's get off the track.

Then there would be a difference owing to South Pacific, the difference between what it paid to the supplier of whiskey and what the customers paid to South Pacific for whiskey.

The Witness: That is correct.

The Court: That would have to be paid by someone. Would Mr. Sterns pay that?

The Witness: That is what has been allowed to him.

The Court: When you allowed him something for cost of merchandise, you would allow him simply the amounts that he paid to South Pacific?

The Witness: That is right.

The Court: Your method then would employ a certain kind of cost, your method necessarily involves a certain kind of cost. And the method used by the accountant for the Petitioner, [287] which is represented by Exhibit 11, for 1943, page 1, would use another kind of cost. It is a cost based upon merchandise purchased for the account of Mr. Sterns.

And that figure is a different figure than the figure that you used for costs, isn't that right?

The Witness: That is right.

The Court: So, Mr. Reed, in your cross examination there is no use trying to refute the witness' testimony about his method, unless you want to make sure the Court understands the method he used. The Court understands the method he used.

(Testimony of O. E. Cummins.)

The Court wants to be sure you understand what is involved in using the bank deposit method.

Mr. Reed: I have read all the cases on the bank deposit method. I am confused on his application of it.

The Court: Are you now confused on this element of cost?

Mr. Reed: The figures are so inconsistent with actual facts——

The Court: Speak to your accountant. Is it clear?

Mr. Radke: There are two different principles used.

The Court: Mr. Radke, do you understand the point the Court is trying to make Mr. Reed see?

Mr. Radke: I understand to this extent: We have taken our figures from one element. Mr. Cummins has approached it from an entirely different angle. [288]

The Court: There is nothing confusing about it?

Mr. Radke: There is nothing confusing about it, although——

The Court: Will you explain that to Mr. Reed?

Mr. Radke: There are some points to be cleared up that Mr. Reed can present to Mr. Cummins in a proper method that will show there are errors in his computation——

The Court: Supposing you sit over there with Mr. Reed, if you will, please, and suggest a few questions to him. I think it might be worth taking another short recess.



(Testimony of O. E. Cummins.)

(Short recess taken.)

Mr. Reed: I am finished with the witness, your Honor.

The Court: You have some other questions?

Mr. Burrell: Yes. I feel one thing must be cleared up, although the answer stands.

The Court: Just ask the question. Go ahead.

### Redirect Examination

Q. (By Mr. Burrell): Mr. Cummins, you were present at a conference attended by Mr. Reed, Mr. Radke, myself, and possibly some other persons, two or three occasions, weren't you, in discussing this case? A. Yes.

Q. At any one of those conferences were the matters of [289] finances or collectibility of any deficiency of Mr. Sterns discussed? A. Yes.

Q. Did you make any statement in that regard at any time? A. Yes.

Q. What was your statement?

A. My statement was that I first worked this case by adding up total bank deposits and computing a tax without any adjustments, and sent my report through.

Some way or another the technical adviser in our office got hold of the report and called me up. They said, "What is the idea here of setting up a case with some \$250,000.00 additional tax and no penalty?"

"Well," I says, "to begin with, I don't think the case is worth spending too much time on, because

(Testimony of O. E. Cummins.)

I only found a few assets on which we could collect a tax." And I told him what those assets were.

Q. What year are you referring to now, when you say you only found a few assets? What time would that be?

A. That would be sometime in '46 or '47.

Q. Thank you. Go ahead.

A. Mr. Sullivan asked me, he says, "Well," he says, "we don't want cases worked that way." He says, "We want the right answers." He said "How long will it take to work the case?" [290]

"Well," I said, "it will take at least 120 days, for the reason I have got to visit every retailer that sales have been made to and have got to run the serial numbers through the Alcohol Tax Unit, to know where the liquor was delivered."

He said, "Go ahead and work it." He says, "We want the right answer."

My report was sent back to me, and as a result I rewrote the report.

Q. Do you recall any other statement you made at that time or any other conference at which Mr. Reed or Mr. Radke was present, as to the collectibility or assets of Mr. Sterns?

A. No, I don't recall any other statements now.

Mr. Burrell: May I say, your Honor, in my opinion this is all beside the point. My witness had been challenged on the point and I wanted to clarify it. That is all.

The Court: You may step down. Thank you.

(Witness excused.)

The Court: Were Exhibits 11 and 12 prepared by the accountant for Mr. Sterns?

Mr. Reed: Yes.

The Court: May he take the stand, please? The Court would like to ask him a few questions.

Whereupon,

RAY RADKE

recalled as a witness for and on behalf of the Court, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

The Court: Mr. Reed, will you give your witness a copy of Exhibits 11 and 12?

Mr. Reed: Yes.

Q. (By the Court): Turning to page 1 of Exhibit 11, Mr. Radke, relating to 1943. Have you explained the method that you used in computing gross income and net loss?

A. Your Honor, the sales—I have taken the sales as made under the agreement entered into between Sterns and South Pacific on all commodities of brands they handled for him. That is your item—I have taken the exact figures as shown by South Pacific sales of commodities of liquor, brands of liquor sold for Mr. Sterns' account, which is item 1 in this report of mine.

In addition to that, there was computed, and I believe the information was furnished by Mr. Sterns, estimated, of odd cases of various brands he had sold, which would be item 2 of net sales, which gave me my gross sales for the period. [292]

(Testimony of Ray Radke.)

On cost of merchandise sold, I have taken the original billings by the distillery to South Pacific and considered those cost of merchandise.

In addition to that, on an estimated basis, to apply against odd sales by Mr. Sterns, I have applied his estimated cost off of that as of December 31st, and I taken taken off the inventory of record in South Pacific Wholesale's books of the only leading brands of Mr. Sterns' liquor, which gives me a net cost as shown in the report of \$166,122.81. That is how I arrive at my gross income.

Now, the ordinary and nominal expenses, such as salaries, are listed in rotation, office salaries and so forth, which are normal operating expenses, and were substantiated, as in the rear of my report, and an analysis made by either canceled checks or cash receipts. I am reluctant to admit it, but somewhere in the last two years, in being transferred from one attorney's office to another, in that the envelope containing signed receipts for cash disbursements—they are not very large to start with—but they have been lost. Canceled checks, which I state are substantiated by checks, are in my possession. I have no canceled checks or cash receipts to show the last three items in this report, which are California tax, liquor tax, reported only by the agreement between Cy Sterns and South Pacific, that he would pay, in addition to the original cost [293] by the distillery, under the consideration—and the agreement between them—that people don't give



(Testimony of Ray Radke.)

things away he had to pay it. That is how I arrived at a loss for that year.

Q. Then your schedule of gross sales cost, gross income, expenses and net loss are a composite in which some of the figures are taken from the books of South Pacific Wholesale.

A. The majority of them.

Q. For sales, some of the deductions are taken from cash receipts and some of these items are estimated.

A. Very few are estimated. Just two items in there. That is the estimated additional sales by Mr. Sterns and estimated additional cost of purchases.

Q. Then it is true, is it not, that the way this business transaction is carried out was that South Pacific used its capital to purchase inventories of liquor?

A. Partially; partially.

Q. And some of Mr. Sterns' customers made direct payments to South Pacific?

A. That is true. Some of the customers' checks, in the paying of South Pacific's billings, were used by Mr. Sterns; some went to South Pacific direct.

Q. But Mr. Sterns never set up a set of books in which he had an asset account of liquor handled by South Pacific. [294]

A. Not to my knowledge. I wasn't associated with Mr. Sterns at that time. I have never seen——

Q. Is there actually a correct way of computing income—I understand that Mr. Sterns' returns were set up on the cash receipts and disbursements basis, isn't that correct?

(Testimony of Ray Radke.)

A. I don't know. I have never seen the returns.

Q. You didn't make up his returns?

A. No.

Q. I assume they were, unless someone advises the Court they were not.

Mr. Reed: I believe that is correct. The inventory being involved, it would be utterly impossible to keep it on the cash basis.

Q. (By the Court): He didn't carry any inventory and he wasn't actually buying the large amount of liquor that was involved, but it is true, isn't it, that Mr. Sterns would pay a net amount to South Pacific, which would represent what he collected from customers?

A. No, I don't—

Q. South Pacific ought to have delivered all the liquor, because it had the liquor licenses?

A. That is correct.

Q. And some customers would pay South Pacific directly for deliveries? [295]

A. Yes.

Q. Some customers would pay Mr. Sterns directly?

A. Yes.

Q. And Mr. Sterns would have to turn over what he collected to South Pacific. South Pacific had to be reimbursed for liquor it purchased?

A. No, your Honor. I couldn't testify that is correct, because—

Q. What do South Pacific's books show?

A. They show items received at times from Mr. Sterns.

Q. I am talking about the bulk of liquor, per-

(Testimony of Ray Radke.)

haps from the three people, Rocky Springs, Baltimore Club and U.L.D., and some others.

A. As to the payment of those invoices——

Q. I am talking about the original purchase, South Pacific paid for that liquor, isn't that right, in the first instance?

A. That is right, actually they paid for it.

Q. Actually their books show that.

A. Yes.

Q. South Pacific, under agreement with Mr. Sterns, expected to be paid——

A. That is correct.

Q. ——for inventories of liquor it purchased—— [296]           A. Yes.

Q. ——and it got its payment from two sources, directly from Sterns' customers and from Sterns, is that correct?           A. That is correct.

Q. In setting up any books for Mr. Sterns or any recapitulation for Mr. Sterns, for his receipt of cash and disbursements of cash, on a cash basis, you would properly limit your analysis to what Mr. Sterns actually paid over in cash and you wouldn't include as something he paid in cash the money that 15 or 20 customers paid directly to South Pacific.

So your statement on page of this Exhibit 11 is one that is prepared according to a theory that you have.

Page 1 was not received in evidence, but I think perhaps I will receive all of these reports in evidence for what they are worth.

Mr. Burrell: Yes.

(Testimony of Ray Radke.)

The Court: Because we have had a good deal in the record about them.

There is one thing I want to inquire about, which Mr. Reed seemed to give up this morning, I don't think he really needed to. It has to do with these items of deductions. I have two or three questions on those. I am still talking about 1943, and I have to cover the same grounds for 1944, if it won't take too long. [297]

Q. (By the Court): When you looked over the books of South Pacific, who actually paid the liquor taxes?

A. They were, reports filed with the state by South Pacific Wholesale Company. It was paid by their check.

Q. Did you find any checks, evidence of payment by Mr. Sterns to reimburse South Pacific for those payments of taxes?

A. Not in a like amount. Not in a like amount for any certain set period.

Q. So in this schedule, when you put down the three last items, that totals about \$13,000.00.

A. They will total \$23,000.00, the last three items.

Q. \$23,000.00? A. Yes.

Q. Those figures are actually taxes, but they do not necessarily represent actual payments by Mr. Sterns, isn't that correct?

A. I have no substantiation by check to show that Mr. Sterns reimbursed South Pacific for those taxes. I will testify to that.



(Testimony of Ray Radke.)

Q. You make an assumption there he must have done it?

A. There is a contract introduced in evidence that obligated him to do it.

Q. That is still an assumption, as to whether he did [298] what his contract called on him to do.

A. Yes. I assumed that he did.

Q. That is still an assumption.

A. Yes, it is, your Honor.

Q. These things are matters of proof. A taxpayer reporting income on a cash receipt and disbursement basis, as you know perfectly well, could not take a deduction for taxes paid or for an expense of any kind in 1943, other than in the amount of what he actually paid in 1943.

A. That is correct.

Q. And if he were obligated to pay some of this tax by way of reimbursing South Pacific for its payment of tax, and he paid some of it in '44 or '45, he would deduct in those later years the amounts which he reimbursed South Pacific.

A. That is correct. It is established that he is reporting on a cash basis?

Q. You have used, assuming when you put down as a deduction a figure of \$10,339.20 in 1943, and the others——

A. That is correct.

Q. ——that must be the Court's conclusion. and is.

A. That is correct.

Q. Going back to these other items above the last three, I don't want to take up the record by reading them, and you have them there on the ex-

(Testimony of Ray Radke.)

hibit, but keeping in mind that the taxpayer can take a deduction only for the cash [299] expenditure in 1943, did you, in making your analyses—and here you are a little bit in a position similar to that of the agent, as he made an analysis——

A. That is true.

Q. ——I have heard his testimony, and I am willing to hear yours. That is perfectly fair. Tell me, please, how many of these items, as set forth in dollar amounts, were ascertained by you to have been actually paid in the amounts stated during 1943.

A. Your Honor, when this report was originally prepared by me, I made an original report for Mr. Sterns, as I stated, approximately two years ago. Every item in there was verified by either a canceled check or a signed receipt by whoever the man was it was paid to. In the meantime——

Q. Did he get signed receipts for all the commissions he paid?

A. I have them. See, in the analysis, further back on page 17 is an analysis of each expense item shown in the P & L statement on page 1. It states in there the items there by cash—when I put in “by cash” I had a bona-fide receipt in my possession or I would not have put it in. Items substantiated by canceled checks, as so stated, I have the canceled checks in my possession.

Your Honor, the last three items again, as shown, which is the brokerage and liquor tax—— [300]

Q. You have added two together on page 18——

A. That is correct. I believe that was all for tax,

(Testimony of Ray Radke.)

\$11,000.00 was added together. Those items were, as you have stated, and are taken into consideration, an assumption.

Q. Would your testimony be in substance the same for 1944?

A. Yes, the same method was used.

Q. Where is the table explaining your deductions in Exhibit 12 for the items of expense?

A. Pages 11 and 12; identical method was used.

Q. On page 11 there are a good many items of cash to South Pacific Wholesale Company.

A. Those items are not verified. I have no receipts for them. I have no receipts for any cash items here. They have all been lost, your Honor, I am sorry to say.

Q. Were they verified originally?

A. They were verified at that time by a periodic settlement statement that Mr. Sterns had with South Pacific, where they would make their occasional settlements by cash; they were submitted to him by South Pacific.

The Court: Have you any questions you want to ask this witness, Mr. Burrell? I am going to receive Exhibits 11 and 12. Before I do, do you have any questions? [301]

### Cross Examination

Q. (By Mr. Burrell): Is there evidence from South Pacific's books showing the periodic settlement by South Pacific to Sterns?

A. There is no evidence in the books to show it.

(Testimony of Ray Radke.)

They prepared a little work sheet that would end up saying what they collected out—what they paid out for him. For instance, say \$3,700.00 was due him and there was probably a check issued for that like amount.

The Court: Where are those?

The Witness: I don't have them. I had them at one time. There have been a lot of things lost out of the papers of Mr. Sterns'.

Q. (By Mr. Burrell): We all understand substantially the agreement between South Pacific and Mr. Sterns. Did South Pacific Company keep books which properly reflected their agreement and the operations under that agreement?

A. Not properly.

Q. Did they set up the understanding, or the understanding was that Mr. Sterns was to receive the 15 per cent legally allowed mark-up on the cost of the liquor from South Pacific.

A. That is correct.

Q. Did they set up an account to show for him that 15 [302] per cent?      A. No.

Q. Did they set up an account to show their expenses in respect for the purchases of Mr. Sterns?

A. Not in respect to his purchases.

Q. How could they strike balances from time to time to show what is due to Mr. Sterns?

A. They must have had their own method. I wouldn't know how they did it.

Q. Did they strike balances from time to time



(Testimony of Ray Radke.)

and pay moneys to Mr. Sterns, pursuant to the agreement?

A. That is right. I have seen some of the settlement statements.

Q. From your analysis of the books, can you tell whether or not they actually paid in final balances which represented profits to Mr. Sterns under that 15 per cent due him? A. No, I can't.

Q. You couldn't tell that?

A. No, I couldn't.

Mr. Burrell: That is all, Your Honor.

The Court: Exhibits 11 and 12 are received in evidence.

(The documents heretofore marked Petitioners' Exhibits Nos. 11 and 12 were received in evidence.) [303]

The Court: You may step down.

Mr. Reed: May I ask Mr. Radke a question?

The Court: Yes.

Q. (By Mr. Reed): You heard testimony to the effect you attended a conference with me and Mr. Cummins and Mr. Burrell in the Bureau. Do you recall that a loan from Oscar Ross to Cy Sterns was discussed? A. That is right.

Q. Would you please relate the gist of that conversation?

Mr. Burrell: Does your Honor feel this is material to the issues? I object to it as being immaterial and irrelevant.

The Court: I can hardly tell before I hear it. Go ahead.

(Testimony of Ray Radke.)

The Witness: There was a conversation as to—on Mr. Sterns' financial status, as of the end of the period of business of 1944, and who made the remark I don't know—it might have been Mr. Reed or myself or somebody—but Mr. Sterns stated he owed Oscar Ross somewhere around \$30,000.00 or \$32,000.00 for loans, which Mr. Cummins—he said, "They are not loans. They show in Mr. Ross' books as loans, but" he said, "I made a transcript of the books and that was just Ross' way of burying blackmarket payments, as they could not [304] show on his income tax." And he says, "Those loans still show on his books and they will never be paid."

The Court: Anything else?

Mr. Reed: Yes.

Q. (By Mr. Reed): Was the amount of sales of liquor from Sterns to Ross discussed? If so, relate that conversation.      A. The sales?

Q. Of liquor from Sterns to Ross.

A. There was a discussion of it, and I think the gist of the discussion was that Mr. Sterns had not sold much liquor to Mr. Ross. It was a very nominal amount. I don't recall, but maybe twelve hundred, thirteen hundred, fourteen hundred dollars, something like that.

Mr. Reed: That is all.

The Court: You may step down.

(Witness excused.)

The Court: Mr. Clerk, would you look to see

how many exhibits were marked for identification and have not been received?

The Clerk: Respondent's Exhibit P and Petitioners' Exhibit 17. Those two have not been received in evidence.

The Court: May I see P and 17?

Did you note a description of it?

The Clerk: No, I did not, your Honor. It was [305] taken right to the witness stand.

The Court: You asked Mr. Cummins whether he had seen the original of Exhibit 17?

Mr. Reed: Yes.

The Court: Do you wish to offer that in evidence?

Mr. Reed: Yes, your Honor.

The Court: For what purpose? I don't know what it is, but for what purpose?

Mr. Reed: Your Honor, I have tried to establish the lack of income of the Petitioner during the taxable years on a net worth theory, and I had hoped that Respondent would challenge that theory and try to show that my analysis was erroneous.

Of course, if the Petitioner had assets of any sizable amount after 1944 it would probably be some evidence supporting the Commissioner, that he has secreted.

The Court: I will receive Exhibit 17.

(The document heretofore marked Petitioners' Exhibit No. 17 was received in evidence.)

The Court: May I have your attention, gentle-

men. We are getting to the end, but you will have plenty of time to pack up your papers later.

I will receive P for whatever it is worth.

(The document heretofore marked Respondents' Exhibit P was received in evidence.)

The Court: That takes care of all the exhibits that were offered, I believe. I won't take very long. I will have to ask those who have been assisting counsel to wait for a few minutes.

I want to see Mr. Reed and Mr. Burrell for a few minutes in chambers. We will be finished in about 15 minutes.

(Short recess taken.)

The Court: The Court has listened very carefully to all that has been presented in these proceedings during the past two days, and has examined exhibits as they have been offered, and carefully checked tabulations and figures, and considered the testimony of witnesses.

The Court is not at this time convinced that the Petitioner received net income of \$160,000.00 in 1943 or \$75,000.00 in 1944.

The Respondent's counsel relies upon the testimony of some witnesses who say that they made side payments or what we call payments of overage to Mr. Sterns. Testimony of Mr. McClain is convincing, but his testimony is that he paid something around \$4,300.00.

The testimony of Mr. Luther Smith is vague and not very convincing. I feel that the Respondent's proof is exceedingly weak as to the large amount of net income which is the basis for the deficiencies.



The use of various methods to reconstruct income [307] is perfectly all right. The use of bank deposit method is a recognized procedure.

The agent admitted on the stand, however, that he could not be absolutely certain that there wasn't perhaps a duplication of around \$30,000.00 in his reconstruction in cash receipts, which, under his method, would have to be treated as "income."

Therefore, the Court is not convinced and is not sure that the—in the use of the bank deposit method of reconstructing income, there have not been some errors made. The Court will examine all of the transcript, recheck all the exhibits, and will make a decision under a memorandum findings of fact and opinion as soon as possible after the transcript is received.

The questions presented are fact questions. I do not think it is necessary for counsel for either party to file briefs and I do not wish to have briefs filed. I don't think the Court needs to be aided by the briefs. Therefore, the Court is not requesting briefs. And the Court will take all of the exhibits except some accounting books of the South Pacific Wholesale Company, these bound volumes, which I believe it is not necessary for the Court to have.

Does counsel agree with me?

Mr. Burrell: Yes.

Mr. Reed: Yes, your Honor. [308]

The Court: Then the record will show that those exhibits have been returned to the Petitioner. Otherwise, we will take the exhibits.

I believe, Mr. Burrell, that you wanted to in-

produce photostatic copies of the returns. If the Court is going to decide the case soon we will not hold those very long and perhaps you don't need to go to the expense of having those photostated.

That, gentlemen, concludes the trial of this case.

Mr. Burrell: Do I understand that if Respondent does desire to file a brief we may so advise you while you are here in Los Angeles, at some subsequent date from now?

The Court: If you desire to file a brief, you know that the rules are that briefs must be filed within 45 days.

Mr. Burrell: Yes, your Honor.

The Court: In almost all the offices of the Respondent, they are so burdened with work they don't file briefs within 45 days. I intend to decide this case within 45 days. Therefore, if you elect to file a brief, although the Court does not request it, I think that it would be well for you to notify your opponent Mr. Reed, so that he may also file a brief.

Mr. Burrell: Thank you, your Honor.

The Court: Within 45 days. And it is not necessary for you to advise me while I am in Los Angeles. You [309] could advise Mr. Reed that you are going to file a brief within 45 days, and send a copy of the letter to me and that will put me on notice.

Mr. Burrell: Thank you.

The Court: I really don't think it is necessary, however, but do as you consider best.

I think perhaps I should say to the agent that the Court understands he has spent many hours

of hard work in this case, and his work has no doubt been done with the greatest deal of care under the circumstances. This happens to be a case in which it is very hard to make accurate and absolutely complete analyses of any kind.

Is there anything further?

Mr. Reed: No, your Honor.

Mr. Burrell: No, your Honor.

The Court: That is all. Thank you very much.

(Whereupon, at 5:15 o'clock p.m., Thursday, October 22, 1953, an adjournment was taken until 2:30 o'clock p.m., Tuesday, October 27, 1953.) [310]

The Clerk: Recalling Dockets 37940 and 37941, Ruth Sterns and Cy Sterns. Mr. Reed and Mr. Burrell.

The Court: Mr. Reed, there has been received in evidence as Exhibit P in this proceeding the revenue agent's summary of his investigation. He has made an analysis of bank deposits, and over the week end I had an opportunity to look over the exhibits in this case and I thought that I should recall the proceeding to inquire about the matter of the bank deposits.

Now, let me ask you this: Prior to the trial of this case were you able to have any conferences with Mr. Burrell about the Respondent's determination.

Mr. Reed: Yes, your Honor.

The Court: I noticed that the statement attached to the Notice of Deficiency does not set forth the Respondent's analysis of bank deposits, and the Re-

spondent's Answer does not set forth that analysis.

So I think it is possible that in the beginning of your considerations of this case, you might not have known about the Respondent's analysis of bank deposits. I want to be sure before we end the record what the Petitioner can do to explain his large bank deposits in the years 1943 and 1944.

I don't feel that we are finished with that [314] aspect of the case. Mr. Radke, the accountant, who is also here today, prepared a statement for the Petitioner, Exhibits 11 and 12, in which he analyzed what Mr. Sterns would receive from the sale of liquor handled by the South Pacific Wholesale Company. That exhibit has been explained as also involving some estimate because you do not have complete books and records from Mr. Sterns and we don't have any account statement from South Pacific Wholesale Company about all its transactions with or for Mr. Sterns.

The request was made during the trial last week for such statement, and my recollection is that the Court was advised there was no final accounting or statement made by Southwest Pacific, none showed on its books. Is that correct?

Mr. Radke: That is true.

The Court: The Petitioner, in effect, is charged with having realized unreported income with over-ceiling sales and he admits that he did receive some income from over-ceiling sales. There is a little conflict now in testimony.

Mr. McClain has testified that he made payments for liquor to Mr. Sterns in amounts representing



over-ceiling payments. And he denies that he ever received any Old Granddad Whiskey or any other standard brand whiskey or liquor from Mr. Sterns.

I think the Petitioner ought to be given one more [315] opportunity to answer some of the testimony which is in direct conflict with his own, and also that he ought to explain, make every effort to explain what these bank deposits were. Now, what can you do, Mr. Reed.

Mr. Reed: I believe, your Honor, that the evidence will show that Petitioner collected large sums of money, that his customers gave him in cash and in checks substantial amounts, which he treated as advance payment and later returned to those he couldn't deliver liquor to, and the evidence will also show that large amounts of moneys were transferred to South Pacific.

Also that South Pacific periodically accounted to Petitioner for the net result of their operation, that is, the profit to Petitioner, and their books so show. We have the books in court.

The Court: According to Exhibit N, checks of Mr. J. H. Randolph, he made payments directly to South Pacific for liquor that was delivered to him. We don't have other checks of purchases of liquor from the South Pacific, but Exhibit N was offered as an example of the procedure payment direct to South Pacific by those who purchased liquor.

The inference to be drawn from that item of evidence is that all of these bank deposits were not deposits of payments received by Mr. Sterns for

liquor held by and delivered by South Pacific Wholesale. [316]

Mr. Reed: Yes.

The Court: We have Exhibits R and Q, photocopies of checks of South Pacific Wholesale Company to Mr. Sterns. These can be totaled. But they are in amounts of less than a thousand, up to \$8,522.70.

Exhibit Q, checks for 1943 of payments that run as high as \$10,000.00. And the inference to be drawn from these is that these represent the payment to Mr. Sterns of profit, his share of profit on the sale of liquor by South Pacific. If these were totaled they would not come to very large amounts, so they don't account for a great deal of the gross deposits.

Exhibit H are invoices of South Pacific to purchasers of liquor delivered by South Pacific, Smith, McClain, Randolph. I think those are the persons to whom liquor was sold under that exhibit. Those exhibits were offered to indicate that payment for cases of liquor were made to South Pacific upon delivery of the cases of liquor to the purchasers.

We returned an exhibit to you the other day that is one of the accounting sheets from the books of South Pacific. Did you bring that back today?

Mr. Reed: I am sure we did, your Honor. I just don't know what it is you are referring to.

The Court: May we have that again? They were taken out of the book, Mr. Radke.

Mr. Radke: The invoices, you mean? [317]

The Court: No. Let me see that again, that minute sheet.

Mr. Reed: We returned everything we took from here. We haven't touched our files.

The Clerk: They were four binders.

The Court: J, K, L and M are four binders of South Pacific. Those were returned. It was a journal of South Pacific Wholesale Company. I think I have reference to Exhibit I.

Mr. Reed: Yes, this here (indicating).

The Court: Then I am mistaken in referring to some sheets that were detached. Where in those books do you have a summary of account with Mr. Sterns?

Before you get into that, to what did you have reference a few minutes ago, Mr. Reed, when you said there had been presented to the Court something showing the payments of South Pacific to Mr. Sterns or Mr. Sterns' payments to South Pacific?

Mr. Reed: I believe——

The Court: What did you mean?

Mr. Reed: ——the testimony showed that there had been large payments from Mr. Sterns to South Pacific.

The Court: That is testimony.

Mr. Reed: Yes.

The Court: Well now, is there testimony to [318] corroborate that testimony?

Mr. Reed: I believe Mr. Cummins testified that he gave the Petitioner credit for having paid South Pacific approximately \$97,000.00 in the year 1943.

The Court: Well, you might ask Mr. Cummins

now to make that clear. Here is Exhibit P. I don't mean that Mr. Cummins should take the stand now, but he might show you in Exhibit P what there is there.

Mr. Reed: In Mr. Cummins' analysis he allows payments from the banks to South Pacific in this amount.

The Court: \$97,607.61——

Mr. Reed: Yes.

The Court: ——for 1943. How much is allowed for 1944?

Mr. Reed: \$45,695.00.

The Court: But even allowing for that, the agent's report shows his calculation, that there is \$160,492.00 for 1943, and \$75,615.00 for 1944, which cannot be explained as anything, other than income, according to bank deposits.

Now, my inquiry has to do with those balances.

Mr. Reed: Your Honor please, those net incomes arrived at by the agent were shown to be arbitrary due to the fact there were many redeposits and transfers that just could not possibly be income. For example,——

The Court: I recall all of that. What I want to [319] know is this, Mr. Reed: If the Court requests the Respondent to have the bank records brought in, which have been subpoenaed, and which are available, will the presence of those bank records help Mr. Sterns to explain some of those deposits?

Mr. Reed: I don't believe so, your Honor.

The Court: Do you want to ask him? He is in the courtroom.



Mr. Reed: Mr. Sterns would further testify that he drew large cash payments from his accounts, which accounts will show evidence of—and transmitted those moneys to South Pacific, which, under the Government's theory of the case, they do not give Mr. Sterns credit for.

It is quite evident from an analysis, from the purchase invoices in the books, in 1943 there was approximately \$200,000.00 of liquor purchased for Sterns' account, through South Pacific.

The Court: That is true. But the Respondent has introduced evidence that customers paid South Pacific.

Mr. Reed: Yes, that is true, your Honor, but——

The Court: So that unless we have an accounting from South Pacific, which will show how much of the principal amount for all of the liquor it handled was paid by customers, and how much of the principal amount was paid by Mr. Sterns, Mr. Sterns having received payment from customers, then the whole matter remains in an uncertain state and it is impossible [320] to make a finding on the matter of how much of the principal amount of the cost of the liquor was paid to South Pacific by Mr. Sterns, rather than by purchasers.

It seems to me that one direct way of getting the facts about this matter would be to look into the records of South Pacific, to find out whether the records show what it collected from customers and what it collected from Mr. Sterns.

Mr. Reed: Your Honor——

The Court: Mr. Radke is here and I would like

to ask Mr. Radke what the problem is. I understand, Mr. Radke, you have gone over the books of South Pacific.

Mr. Radke: That is right.

The Court: What is your problem?

Mr. Radke: When these books were maintained, which, of course, I did not maintain at the time, there is no daily breakdown of who the cash was received from. Whatever went into the bank was considered cash received. They kept no records of who the money was received from. These are the original books and they don't disclose that.

The Court: Then, Mr. Reed, we have to fall back on Mr. Sterns' record. If he made payments in cash to South Pacific and doesn't have any record of it, he is unable to produce any evidence directly on the point, is that the situation?

Mr. Reed: That is substantially so, your Honor. [321] But the evidence is shown that South Pacific only collected \$2.00 a case for their services.

The Court: Don't make me go over that again. We are dealing with bank deposits. The Petitioner is charged with having received a large amount of net income, as evidenced by the flowing in and out of money from his bank account.

Mr. Reed: Yes.

The Court: Your burden of proof does involve some explanation of those large amounts passing through Mr. Sterns' bank accounts in the years. It has been demonstrated here that not all of the principal cost of the liquor was paid for by Mr. Sterns.

Mr. Reed: Right.

The Court: Therefore, you cannot say that because South Pacific bought \$200,000.00 worth of liquor, for example, that \$200,000.00 worth of deposits and withdrawals from Mr. Sterns' bank account must represent his receipts from purchasers and his payments to South Pacific of the principal cost of the liquor.

There is evidence that purchasers received invoices from South Pacific with the delivery of cases of liquor. There is a strong inference that all of the liquor that was delivered by South Pacific was accompanied by invoices of South Pacific, and that the drivers or other representatives of South Pacific collected payment of those invoices upon [322] delivery of whiskey to customers.

Mr. Syracuse was here for a short time. He wanted to be heard out of turn and then excused. The Court heard him. We didn't have enough time to examine him, and I don't see him here today.

Mr. Reed: We can have him tomorrow. He is in San Diego, I believe, this afternoon.

The Court: We don't have anything that provides a basis for making even a rough estimate of how much of the principal cost of liquor was paid to Syracuse, or to South Pacific by Mr. Sterns and how much was paid to South Pacific—

Mr. Reed: Your Honor please, I believe Mr. Cummins has acknowledged that the greater funds than \$97,000.00 went from Sterns to South Pacific, but he refuses to give Sterns credit for those payments, because he says they are cash payments and did not come out of his account.

The Court: He gives him credit.

Mr. Reed: The greater sums than \$97,000.00 for 1943, he refuses to give him credit for it on the grounds it didn't come out of Mr. Sterns' bank account.

Is that correct, Mr. Cummins?

Mr. Cummins: No, it is not.

The Court: You are here, Mr. Cummins. What do you have to say about that?

Mr. Cummins: These cashier's checks that were used [323] to pay South Pacific for liquors purchased by Mr. Sterns were partly paid by personal checks and the balance by large amounts of cash. I have given him credit for the total amount of the cashier's checks that he used to pay South Pacific. We have the bank records here to show the cash was used to buy these cashier's checks.

Mr. Reed: Mr. Cummins, in my understanding, and our negotiations before this hearing, you refused to allow us any cost of goods sold beyond \$97,000.00, due to the fact that the payments were made to South Pacific in cash and none were checks.

Mr. Cummins: There must have been a misunderstanding, because that is not true. Practically every one of these cashier's checks are purchased with Mr. Sterns' personal check, plus ten thousand or some item like that in cash, which I have allowed in total in the way of cashier's check for the cost of merchandise, because it was all that was paid to South Pacific.

The Court: What is the total amount of the cashier's checks? Do you have that?



Mr. Burrell: We would have to total it, your Honor, if you would like to give us a moment.

The Court: Does it come to as much as \$97,000.00?

Mr. Cummins: It looks like about \$58,000.00, roughly.

Mr. Burrell: Allowed by cashier's check.

The Court: And the agent allowed \$37,000.00.

Mr. Reed: Those are his personal checks.

The Court: \$37,000.00 more?

Mr. Cummins: Yes.

The Court: The allowance for cost of liquor is \$97,000.00. I could take a recess and let you discuss this, if you would like to. I want to find out one other thing. We have the black notebook of Mr. Sterns', Exhibit G. On this loose-leaf paper there are handwritten notations of names of people and amounts of money. I don't recall exactly what this book is supposed to be, and I think that needs to be made clear, but after that is done I will have to ask you to prepare some kind of an analysis of this, with a total figure for the amounts of individual entries. I can't take the time to add those up.

Mr. Reed: We have a machine here in the courtroom and an expert to help us.

The Court: It can be done during a recess. That is a good idea. You may want to ask Mr. Sterns to testify a little more about what those payments represent.

We have a matter set down for tomorrow morning. If you have to come in again it would have to be tomorrow afternoon. I don't know how much

more we can add to the record in this case, but I thought it was necessary to make an effort to get some explanation for the unaccounted for net amount of the bank deposits, which are termed income in [325] the Respondent's determination.

I will take a recess. Before I do that, Mr. Burrell, is there anything further you now want to offer in this case, since it has been reopened?

Mr. Burrell: I do have two representatives of two of the banks involved in this case present, with original documents available for offering for admission.

The Court: What are those documents, bank statements?

Mr. Burrell: Bank statements and also the application for and the cashier's checks of the precise ones we have been discussing here in the agent's schedule.

The Court: How many bank statements? There would be 12 for each year?

Mr. Burrell: Yes. One of the banks, I believe, only has two statements, the account having been opened and closed in two months. They have been checked by Mr. Radke, against the taxpayer's bank statements.

It was my intention that after they had an opportunity to check them, to offer them in one form or another.

The Court: It seems to me you should offer them to supplement the agent's report, to save time and to save the inconvenience of having the banks' records brought in.

You have relied upon the agent's report. I believe we have to have a little bit more than that. And with that [326] understanding, if you will check over whatever matters you can between you, and after the recess put in the record anything else that is necessary, I think perhaps we will finish this afternoon. Then I believe that I will have briefs filed and give you the dates of the briefs later.

(Short recess taken.)

Whereupon,

### CYRUS STERNS

recalled as a witness for and on behalf of the Petitioners, having been previously duly sworn, was examined and testified further as follows:

The Clerk: Mr. Sterns is on the witness stand, Miss Reporter, and he was previously sworn.

### Direct Examination

Q. (By Mr. Reed): Mr. Sterns, you have listened to the difficulty we are having and I would like to have you explain to the Court your explanation of the very large bank deposits and how the payments to South Pacific for liquor were handled.

A. In the inception of the business, the first three cars were paid by me personally. That is, by that I mean I had some money and then I went out and collected deposits from customers. The amount of purchases was \$394,000.00. The records of South Pacific on their bank deposit slips show from whom the money was received. They had paid through [327] the customers direct, or the custom-

(Testimony of Cyrus Sterns.)

ers direct had paid South Pacific approximately \$175,000.00.

Mr. Burrell: Excuse me. Are you testifying now of what these bank deposit slips would show if they were in court?

The Witness: That is right.

Mr. Burrell: Are they here in court?

The Witness: They are.

Mr. Burrell: For the record, I will object until they are here. Otherwise, it is hearsay evidence he is giving.

The Witness: They are right here.

The Court: These are the bank deposit slips of whom?

The Witness: South Pacific.

The Court: Go ahead for a few minutes, please.

Q. (By Mr. Reed): Mr. Sterns, I show you Petitioners' Exhibit for identification and ask you what these are.

A. Those are South Pacific's deposit slips showing their deposits from whiskey delivered to customers and checks paid out to them direct, where I did not pay any money for the delivery of this merchandise. And it shows my brand, which was Rocky Springs and U.D.L., and in fact wherever there was a question of a doubt I charged myself. If there wasn't my name or our name under there, I charged that certain [328] amount to me, instead of taking the advantage of it.

Mr. Burrell: I understand you are offering these, Mr. Reed?



(Testimony of Cyrus Sterns.)

Mr. Reed: Yes, I offer these as Petitioners' exhibit.

The Court: That would be 18.

The Witness: Mr. Reed, don't leave go of those checks. The checks have nothing to do with those deposit slips.

Mr. Burrell: If your Honor please, I appreciate Mr. Sterns' stating they are the deposit slips that South Pacific Wholesale Company—I have no knowledge they are in fact. These are not your records, are they, Mr. Sterns?

The Witness: I was doing business with them.

Mr. Burrell: How did these come into your possession? These belong to South Pacific Wholesale Company.

The Witness: The same as the books, they gave me their books and records.

Mr. Burrell: Do you have somebody here who can identify these?

The Witness: Mr. Radke, I believe, will or can. They were in his possession.

Mr. Burrell: I object to them as being inadmissible.

The Court: Mr. Radke, if you can identify them, do so from where you are? [329]

Mr. Radke: They were tendered to me by South Pacific as part of their records in their investigation. The handwriting on the majority of these I can testify to as being that of Mr. Pernetti, the manager of South Pacific Wholesale.

Mr. Burrell: Mr. Cummins advises me he has a

(Testimony of Cyrus Sterns.)

schedule that should show the detail of all of these. Given a moment we can verify it, and then I would have no objection to them.

These I have not known about previously. Do you wish to continue? He will be checking them in the meantime.

The Court: I think so. Time is getting away from us.

Mr. Burrell: Yes.

Q. (By Mr. Reed): Mr. Sterns, I show you Petitioners' Exhibit for identification——

The Court: 19 for identification.

(The documents above referred to were marked Petitioners' Exhibits No. 18 and 19 for identification.)

Q. (By Mr. Reed): ——Exhibit 19 for identification, and I ask you what those are.

A. Those are South Pacific bank deposits for the year 1944, merchandise which was in our contract and delivered to my customers, but paid for direct by the customers. The [330] total amount of these is approximately \$175,000.00. Merchandise that we had purchased was three hundred—well, I just—two hundred two—I was just giving a round—two hundred two and one hundred forty-seven, and that would be \$350.00, and then two other items of twenty-three, I think, and twenty-four thousand, totaled approximately four hundred thousand.

The Court: Mr. Baird, is the next exhibit of the Petitioner 18?

The Clerk: Yes, your Honor.

(Testimony of Cyrus Sterns.)

The Court: You can continue, please.

The Witness: The balance of that money to pay for this merchandise came direct through me, or loans that were made by South Pacific from the banks and deducted as we delivered the merchandise. Most of it came through me. The former collections that I had deposited in the bank.

The Court: How much came through you?

The Witness: Well,—

The Court: Amounts that South Pacific obtained by loans wouldn't clear through your bank account?

The Witness: No, they would not, your Honor.

The Court: We are trying to find out something about your bank deposits. Have you any way of ascertaining how much you paid?

The Witness: I think Mr. Radke may have a—would [331] it show on which cars they borrowed money from their bank?

Mr. Radke: No, I don't have the detailed breakdown on that.

The Witness: Well, there is a matter of thirteen or fourteen thousand cases, and I know with the exception of the one hundred seventy-five thousand, that that the money came through moneys that I deposited in the bank, and so forth.

The Court: So that isn't clear to me. I don't know. You are talking about cases of whiskey. You get away from the point where I can follow you. You start out by referring to three cars, and I don't know how many cases are in a car.

The Witness: In some of them, there is usually

(Testimony of Cyrus Sterns.)

a minimum of fifteen hundred and they run up to twenty-two hundred in a car. May I ask this off the record, your Honor?

The Court: No, we have to stay on the record now. But go ahead and ask it on the record.

The Witness: What I want to ask is I think we could possibly go to the Hollywood State Bank and find out on their notes, which were for U. D. L. and which were for Rocky Springs. They would designate that on their notes as they made them, I presume. I don't know that is correct. Is that correct? Am I correct there?

Mr. Radke: I don't know whether they would do that.

The Court: It is a little late to do that. If you could do that later and take care of it by stipulation—— [332]

The Witness: The discrepancy here, I don't know whether it was brought up in testimony or not, but Mr. Cummins claims merchandise in 1943 cost \$97,000.00 and it was \$230,000.00.

The Court: He doesn't claim that. You don't understand.

The Witness: I possibly don't understand how they figure.

The Court: He credits you with having paid \$97,000.00 to South Pacific for liquor.

The Witness: There is another charge against that liquor of about \$40,000.00, to bring the cost up to what the liquor actually cost.

The Court: Customers who bought liquor from



(Testimony of Cyrus Sterns.)

South Pacific made payments direct to South Pacific?

The Witness: That has nothing to do with the cost.

The Court: I don't think we are concerned now with the cost. The agent and attorneys are agreed as to what the cost was. We are trying to find out what passed through your bank account.

The Witness: Mr. Cummins further says that the records show I only paid sixty some thousand dollars. My records showed that in cash and personal checks I paid on those checks \$115,944.00.

The Court: To whom? [333]

The Witness: South Pacific.

The Court: \$115,944.00?

The Witness: Yes.

The Court: That is in excess of what the agent has allowed?

Mr. Burrell: It is, your Honor.

The Court: The agent allows ninety-seven thousand-odd dollars.

Mr. Burrell: Yes.

The Court: And the Petitioner claims that he paid about \$18,000.00, close to \$20,000.00 more to South Pacific.

The Witness: No, no.

Mr. Burrell: For clarity, is he speaking of one year or both years?

The Court: Are you speaking of 1943 or 1944?

Mr. Burrell: In both years we allowed some one hundred forty thousand dollars.

(Testimony of Cyrus Sterns.)

The Witness: What I am talking about, your Honor, is that he had some checks that he said that showed I paid South Pacific. Not the check, for instance, like twenty-seven thousand one hundred twelve, and another thirty, so forth and so on. He claims he shows that I only paid them \$70,000.00.

I have records here and checks to show in that instance, that is not the cost of the merchandise.

The Court: There isn't anything very clear here, [334] Mr. Reed. In reading this I will not get anything out of these statements. I think you ought to assist Mr. Sterns. You know what the agent has determined.

Where is Exhibit P, the agent's report? Give that to Mr. Reed.

The Clerk: Yes, your Honor.

The Court: Do you have a copy of the agent's report. Here is the exhibit right here now.

Mr. Sterns, Mr. Cummins indicates that for the year 1943 you had total gross receipts of \$287,000.00, made up of bank deposits and undeposited checks from South Pacific Wholesale Company, and undeposited currency used.

In adjusting that he arrives at refunds of \$29,564.00 and cost of merchandise of \$97,000.00. Are those figures correct?

The Witness: No, they are not.

The Court: Mr. Reed, I can't just accept categorical denials of that kind. Will you step around, please, to the witness stand?

Mr. Reed: Yes.

(Testimony of Cyrus Sterns.)

The Court: You are not helping the situation now at all. Will you open that report, please? Will you point out to Mr. Sterns the allowance of \$97,000.00 representing his payments to South Pacific out of his bank account?

Mr. Reed: Right here (indicating). [335]

The Court: You see that figure?

The Witness: Yes.

The Court: Will you turn to 1943 and show him the next figure that corresponds?

Mr. Reed: 1944?

The Court: 1944.

Mr. Reed: Right here (indicating).

The Court: What is that figure?

Mr. Reed: What is this figure, Mr. Sterns?

The Court: You tell me.

Mr. Reed: \$45,692.00.

The Court: The agent has credited Mr. Sterns with making payments through his bank account of a total—do I still have your attention or not.

Mr. Reed: Yes, your Honor.

The Court: —of a total of \$142,695.00 Did you hear what I said?

Mr. Reed: Yes.

The Court: Mr. Sterns has been talking at random rather loosely about what he paid to South Pacific. He says that he paid to South Pacific \$115,944.00, without indicating whether that is the total paid in 1943 and 1944, or in just one year.

Now, Mr. Sterns, the agent has given you credit for payments through your bank account of an

(Testimony of Cyrus Sterns.)

amount in excess of [336] \$115,944.00. So that statement that you make doesn't enlighten the Court any more than it knew before.

The Witness: Your Honor, the statement here says cost of merchandise in '43. Now, I am not a bookkeeper and I don't know the way they calculate it, but we have invoices that show, without a question of a doubt, we bought—the cost of the merchandise was \$203,000.00.

The Court: Mr. Reed, I didn't call you back now to lose time in this way. You will have to direct your witness.

Mr. Reed: All right.

The Court: That, of course, is not what is at issue at this point. Mr. Sterns could keep us here for hours arguing with the Court and with the agent about the agent's report.

Now, you will have to control the situation. I called you back to give you an opportunity to make explanation that you could. I assume that, as counsel for Mr. Sterns, you accept certain items in this report as correct. That is, you agree his liquor cost a certain amount, I suppose?

Mr. Reed: If your Honor please, we have stipulated to the gross bank deposit. That is all. My theory of this case, and the Government too, in their Answer and in their 90-Day—in their Answer to the Petition went on the theory that South Pacific acted as an agent for Mr. Sterns. It was in reality Sterns carrying on business through South Pacific. [337]

There I believed, in prosecuting this case for him,



(Testimony of Cyrus Sterns.)

the best way to arrive at the income that he would be taxable upon would be to make an analysis of all the sales and expenditures, and so we took South Pacific's books and such records as Mr. Sterns had, and that was our endeavor to arrive at the next net taxable income.

The Court: Mr. Reed, that still doesn't get us any place. You may as well take that report here (indicating).

Mr. Reed: This report here that Respondent relies upon, I never saw it until I came in the courtroom here.

The Court: I asked you when we started today if you hadn't had some conferences before the trial with Mr. Burrell and if he hadn't advised you that the agent's report was based on bank deposits, and all of that, and you said he had.

Mr. Reed: Yes, but here is the extent of what he gave me (indicating).

The Court: You can't plead surprise entirely.

Mr. Reed: No, your Honor, I am not endeavoring to do that.

The Court: I would like to try to save some time and also save the record. I am now going to ask for briefs. You can state your argument in your brief.

The Respondent has made a determination which is based upon an analysis of bank deposits. You can argue until doomsday that you can determine some of Mr. Sterns' income in [338] the taxable years by analyzing the account with South Pacific. It is perfectly true that you can present to the

(Testimony of Cyrus Sterns.)

Court, through that method, an explanation of some of the Petitioner's income, but that isn't the point. You are not joining the issue when you do that. There is no theory about these bank deposits. They exist. A great many deposits were made in those accounts and withdrawals were made from those accounts. The deposits for each year exceed the withdrawals by a rather large amount, and the determination of the Respondent is that after making allowance for payments for merchandise and certain expenses, that so much of that excess must represent income.

Now, the Petitioner is charged, in effect, in this case with having income from blackmarket operations. It is really part of your burden of proof to go as far as you can in rebutting the inferences to be drawn from the extent of bank deposits. So we thought if Mr. Sterns could explain his bank deposits he would then be making an effort to rebut the inferences to be drawn from the existence of bank deposits which are in excess of withdrawals.

Mr. Reed: Your Honor please, I believe it is already in the record that before the close of 1944 there was nothing left in the banks, and that the testimony was to the effect that all of the funds had been used in prosecuting his business. As a matter of fact, he wound up in debt because of his [339] business.

The Court: You haven't introduced any bank

(Testimony of Cyrus Sterns.)

statements showing balances or withdrawals, or anything else.

Mr. Reed: I believe it is Respondent's intention to introduce the bank statements, your Honor.

Mr. Burrell: Yes. Would you like to have me introduce them at this time? I have them all laid out here in a certain order.

Mr. Reed: Just a moment then. We have Mr. Sterns' record book in evidence. I have had an accountant summarize the totals and I would like to have him testify as to what those totals are.

Mr. Burrell: Why don't you have it identified and then offer it? I don't even know what it is.

Mr. Reed: It is a summary from this (indicating).

Mr. Burrell: What does it show, that he handled that much——

Mr. Reed: It shows the sales and——

Mr. Burrell: It is going in as a summary from these books?

Mr. Reed: Yes.

The Court: It is going in as part of Exhibit G. What is Exhibit G, Mr. Reed?

Mr. Reed: Exhibit G is the Petitioner's record book he kept during the years 1943 and '44. It was made in [340] the ordinary course of business.

The Court: I know, but what is it, moneys received by him from customers?

Mr. Reed: I believe it consists of all sales, whether they went through South Pacific or through his own hands.

(Testimony of Cyrus Sterns.)

The Court: Will you ask him, please?

Mr. Reed: Yes.

Q. (By Mr. Reed): Mr. Sterns, please explain those entries, briefly?

A. Well, that was delivered by South Pacific——

The Court: Mr. Sterns, Mr. Reed doesn't help you enough. I asked you to look at a page in Exhibit G. These are entries, line by line, for October 1943. The names of individuals are here, like Clark, Popelman, Cerp, and so forth.

Then there are some figures, 10, 20, 5. What do these figures mean, 10, 20 and 5, cases of liquor?

The Witness: Cases of liquor.

Q. (By Mr. Reed): What do these names mean?

A. That is the customer's name.

Q. What do the figures at the far side mean, dollars, \$273.95?

A. That is the cost of ten cases that was evidently twenty-seven something a case. [341]

Q. The cost—— A. The sales price.

The Court: The sales price?

The Witness: Yes.

The Court: Did you make these entries in this book?

The Witness: Yes.

The Court: Did you receive those amounts of money?

The Witness: In some cases I did.

The Court: Can you tell from those books which amounts you received?



(Testimony of Cyrus Sterns.)

The Witness: I wouldn't be able to after all these years.

The Court: Your record wasn't kept so as to show what payments were made to you, isn't that true? The records on their face don't show what payments were made to you?

The Witness: Those are the payments that——

The Court: Is there anything on this sheet of paper which shows which payments were made to you and which payments were paid to somebody else? Yes or no.

The Witness: On this page, this was paid to the South Pacific Wholesale Company on this page (indicating).

The Court: How do you know that? There isn't anything on the page that says "Paid to South Pacific"? Yes or no.

The Witness: No. [342]

The Court: Then how do you know that the payments on there were paid to South Pacific?

The Witness: Because, as I explained in the testimony, this was delivered, shipped, not having a wholesale or basic permit at the time.

The Court: That is true with all of this. You didn't have basic permits at any time.

The Witness: I didn't. That is why I had to deal through South Pacific.

The Court: Now, go on. Where in this book can we find any notation that any of these payments were paid to you?

The Witness: I would have to go through those

(Testimony of Cyrus Sterns.)

deposit slips then and see which ones of these were paid direct to South Pacific.

The Court: Which deposit slips?

The Witness: South Pacific——

Mr. Reed: Those are in evidence.

The Court: Oh, no, not necessarily. South Pacific would deposit in its bank a whole accumulation of those.

Mr. Reed, so we don't prolong this unnecessarily, Exhibit G does not show on the face of it what payments were made to Mr. Sterns and what payments were made to South Pacific.

You have had a total made of the items for each year and what are the totals for 1943.

Mr. Reed: The accountant didn't make that for '43 [343] alone; for the two years. For 1943, \$183-144.35. For 1944, \$247,253.63. For the two years, \$430,397.98.

The Court: What is the value of Exhibit G, I would like to know, in this case? It was offered by the Respondent. For what purpose was this offered?

Mr. Burrell: Part of the Respondent's theory, your Honor, that the taxpayer in this instance did not keep adequate books of account, thereby permitting the Respondent to recompute his income under Section 41.

The Court: That is the purpose?

Mr. Burrell: That is the purpose. He was subpoenaed to bring in all his records.

The Court: This recap sheet can be marked as Exhibit G, also. It is part of Exhibit G.

(Testimony of Cyrus Sterns.)

Mr. Reed: There is another item on that recap sheet. It is a summary of the cash refunds and refunds paid by check that are quite pertinent.

The Court: Are those shown in the books?

Mr. Reed: Yes.

The Court: I didn't know that. Then bring that out in some way for the record. Tie it in with bank deposits, please, if you can.

Incidentally, can you be sure those refunds were made to Mr. Sterns and not to the South Pacific Wholesale Company? [344]

Mr. Reed: Mr. Sterns, this book here has a record of cash refunds and refunds by check. Who were they made by?

The Witness: Who were they made by?

Mr. Reed: Yes.

The Witness: Made by me personally.

The Court: Refunds to whom?

The Witness: To various customers that had paid me deposits and I couldn't deliver merchandise to them.

The Court: How did you make those refunds, in cash or by check?

The Witness: Some of them by check and some of them by cash.

The Court: What do they total?

The Witness: The refunds by cash for 1943 total \$31,342.40. The refunds by check for 1943 total \$44,654.75.

Refunds by cash for 1944 total \$14,459.00. Refunds by check for 1944 total \$18,600.00.

(Testimony of Cyrus Sterns.)

The Court: On what pages in Exhibit G do the entries indicate cash refunds, as distinguished from check refunds?

Mr. Reed: Pages are not numbered, your Honor, but at the top——

The Court: Are they labeled in some way?

Mr. Reed: Yes. It is titled "Refunds by Cash, 1943."

The Court: And the refunds by check are on an adding [345] machine tape, are they, and are so labeled?

Mr. Reed: Refunds by check—we have refunds by check with an adding machine tape for '44, and for '43 also an adding machine tape total.

The Court: Where did that adding machine tape come from?

The Witness: I had an adding machine and I totaled these.

The Court: What did you total them from?

The Witness: From these records here (indicating).

The Court: Well, all right. Have you seen that, Mr. Burrell?

Mr. Burrell: No, I have not inspected the book.

The Court: Do you want to look at that now?

Mr. Burrell: I don't believe it is necessary, your Honor. I would like to cross examine on it before he is finished.

The Court: Anything else, Mr. Reed?

Mr. Reed: No.

Mr. Burrell: Before I go further, your Honor,



(Testimony of Cyrus Sterns.)

I would like to take this opportunity of introducing in evidence certain records.

The Court: All right.

Mr. Burrell: I will hand to the Clerk at this time for identification photocopy of certain application for [346] cashier's check, which are the cashier's checks identified in the agent's report heretofore introduced.

The Clerk: S for identification.

(The document above referred to was marked Respondent's Exhibit S for identification.)

The Court: Is there any objection? You had the recess to look at all of this. You ought to know right now what it is all about.

Mr. Reed: No objection.

The Court: Respondent's S is received in evidence.

(The document heretofore marked Respondent's Exhibit S was received in evidence.)

Mr. Burrell: I will hand the Clerk at this time photocopies of the cashier's checks, the checks issued by the bank in question pursuant to the application entered in the exhibit——

The Court: Any objection?

Mr. Reed: No objection.

The Court: It is received in evidence.

(The documents above referred to were received in evidence and marked Respondent's Exhibit T.)

Mr. Burrell: I will hand to the Clerk at this time two typewritten copies of bank statements of

(Testimony of Cyrus Sterns.)

the West Hollywood Branch of the Bank of America on the account of Sterns Liquor Company, for identification next in order. [347]

Mr. Reed: No objection.

The Court: Identification or shall we receive them in evidence?

Mr. Burrell: I am offering them in evidence. If that may be understood, I am offering them in evidence as well as for identification.

The Court: Do you want the photostat copies stamped as exhibits?

Mr. Burrell: Yes, your Honor.

The Court: You haven't given the total copies to the Clerk.

Mr. Burrell: I identify these as typewritten copies. That is what I have in this case.

The Court: Those may remain?

Mr. Burrell: Yes, your Honor.

The Court: That is Exhibit U. Is that correct?

The Clerk: That is right, your Honor.

The Court: U is received in evidence.

(The documents above referred to were received in evidence and marked Respondent's Exhibit U.)

Mr. Burrell: I will hand to the Clerk a group of photocopies of bank statements of the account of Cy Sterns in the Wilshire-La Brea Branch of the Bank of America, and ask they be marked for identification and admitted in evidence.

The Court: Any objection to these? [348]

Mr. Reed: No objection.

(Testimony of Cyrus Sterns.)

The Court: V is received in evidence.

(The documents above referred to were received in evidence and marked Respondent's Exhibit V.)

Mr. Burrell: Next in order I will hand to the Clerk a group of photocopies of the bank statements of Sterns Liquor Company on the Wilshire-La Brea Branch of the Bank of America, and ask they be admitted in evidence.

The Court: Any objection?

Mr. Reed: No objection.

The Court: W is received in evidence.

(The documents above referred to were received in evidence and marked Respondent's Exhibit W.)

Mr. Burrell: Your Honor, in all instances these are copies, whether typewritten or photocopies, of the originals which are here in court. The officials of the banks who brought them in, subpoenaed, are here in court, and I will ask they be excused and ask permission to return the originals.

The Court: It seems to be all right. Is that all right with you, Mr. Reed?

Mr. Reed: Yes.

The Court: The witnesses are excused and the originals are returned.

Mr. Burrell: Your Honor, the bank statements just introduced will total up in deposits to the exact amount, I [349] believe, which shows in the agent's report and which has been stipulated to by the parties herein, with the exception of some three

(Testimony of Cyrus Sterns.)

thousand six hundred or so dollars, which were deposited in an account of Mr. Sterns,' the taxpayer, in the California Bank in the Beverly Hills area. That amount in that bank account is a part of the amount stipulated to in this case.

None of the withdrawals in that account are deemed by the Respondent to be pertinent in this case, because none of them are involved in refunds or transfers and that sort of thing.

So I do not feel it is necessary at this time to offer them additionally. I make that explanation for the record.

The Court: All right.

Mr. Burrell: We might clear one thing in the record, your Honor. Mr. Reed had identified two exhibits, namely, deposit slips for two years of the South Pacific Wholesale Company, but they were not offered.

We have checked them against our own schedule and found them to be substantially accurate. But I will object to their receipt in evidence solely on the ground of being irrelevant. They do not identify who is depositing that money or paying it. There is nothing to prove Mr. Sterns contributed any of the sums of money that show on those deposit slips. [350] That would still remain a matter of his proof by his own canceled checks or receipts, or something.

The Court: Hand those exhibits over to Mr. Reed, please, 18 and 19.

Mr. Burrell: We have absolutely nothing to hide



(Testimony of Cyrus Sterns.)

in this case and I am not making my objection on that ground. We have verified them as being the deposit slips and the correct ones. Our objection is to their relevancy as evidence in this case.

Mr. Reed: We will withdraw these, your Honor.

The Court: I want the record to be clear on these things. Is it true that you can't, Mr. Reed, tie up those deposit slips with withdrawals from Mr. Sterns' bank account?

Mr. Reed: If your Honor please, it would take a great deal of time to analyze Sterns' bank accounts and trace the funds into the South Pacific deposits.

The Court: And you haven't done that yet.

Mr. Reed: No, your Honor.

The Court: You cannot at this time tell from Exhibits 18 and 19 which are deposit slips into the bank account, or which items may have been paid the South Pacific by Mr. Sterns by checks drawn on his own bank account?

Mr. Reed: That is right, your Honor. I rather agree with Mr. Burrell. It is irrelevant because the books that are in evidence show what the bank deposits of South [351] Pacific were.

The Court: They do?

Mr. Reed: Yes, your Honor.

The Court: What books?

Mr. Burrell: Oh, yes, one of the sheets withdrawn from the books and which I believe have been offered here or, at least, handed to the Clerk,

(Testimony of Cyrus Sterns.)

to show the total amounts of cash receipts and deposits.

The Court: That apparently takes care of that. You go ahead, Mr. Burrell.

### Cross Examination

Q (By Mr. Burrell): You just testified, Mr. Sterns, that you made refunds to customers in certain amounts for the two years here involved, is that correct? A. Correct.

Q. As a matter of easy computation at my table, those sums you just testified to are in excess of the refunds allowed by the agent in his computations in this case. Did you make any of those refunds by your personal checks? A. A lot of them.

Q. Do you have those checks here in court to introduce? A. Yes, we do.

Mr. Burrell: I think they should be introduced, your Honor. The position we take, your Honor, is we have [352] allowed all those which he can substantiate. I think the record will show we have allowed all his checks.

Q. (By Mr. Burrell): While they are finding those, Mr. Sterns, I will ask you another question. You testified that a balance of the refunds not made by check was made in cash to these customers, is that correct? A. Right.

Q. Do you have receipts——

A. I did have them. Whether they are still available or not——

(Testimony of Cyrus Sterns.)

Q. You don't know whether they are in the courtroom to introduce?

A. They have been thrown around with about nine different attorneys and auditors.

The Court: The question is are they in the courtroom.

The Witness: That I don't know.

Mr. Burrell: Are they, Mr. Reed?

Mr. Reed: I believe so. We may not have that precise amount.

The Court: You may look at those. What is your next question?

Mr. Burrell: About one more question, your Honor. [353]

Q. (By Mr. Burrell): I am directing your attention now only to the cash that you used to make refunds to customers that you are now talking about. What is the source of the cash refunds that you are testifying to? Where did that cash come from?

A. Most of it by deposits in the bank.

Q. How did you withdraw that from the bank?

A. At different amounts.

The Court: How?

Q. (By Mr. Burrell): How?

A. By check made cash to me.

Q. Do you have those checks here to prove and substantiate that, and so you can trace that?

A. I have quite a number of checks here made cash to me.

Q. Were some of these refunds in cash made

(Testimony of Cyrus Sterns.)

out of cash out of your pocket or received from sources other than coming out of your bank account?

A. Sometimes there would possibly be taken from one and paid the other, until I finally cleaned the whole thing out.

Q. You are speaking now of funds which would not go through your bank account?

A. Very little funds I didn't put into the bank accounts.

Q. You are now speaking of some funds that might not [354] have gone through your bank account, with which you used to make these cash refunds? You don't know what that amount is?

A. There may be some of them.

Q. Do you know how much?

A. I can't say that.

Q. Can you identify them?

A. It would be impossible for me to identify them.

Mr. Burrell: That is all the questions at this moment, your Honor.

The Court: With respect to the invoice books of South Pacific, Exhibits J, K, L and M, I believe, are those here in the courtroom now?

Mr. Reed: Yes, your Honor.

The Court: May I have them, please?

I want the record to show that the Court has examined L, J, K and M. These are binders containing South Pacific Wholesale Company's invoices to purchasers. All the purchasers in 1943 and



(Testimony of Cyrus Sterns.)

1944. And the situation is this: South Pacific did business with others and for others, other than Mr. Sterns. The only invoices that we are interested in are invoices showing sales to purchasers of the whiskey that was handled for Mr. Sterns by South Pacific. These invoices on their face do not provide any basis for segregating Mr. Sterns' customers from the other customers of South Pacific.

Therefore, they serve no purpose in the record in [355] this case. They were marked and received in evidence at some point during the trial for the purpose, no doubt, of locating invoices of sales to customers of Mr. Sterns.

I am now returning those to the Petitioner and it is my understanding that the Petitioner doesn't consider them of any value in this case. Is that right?

Mr. Burrell: May I make one comment? They are Respondent's exhibits and were produced——

The Court: I beg your pardon?

Mr. Burrell: ——produced pursuant to subpoena of the Respondent. They came out of Mr. Reed's possession, actually. I will agree they be returned to Mr. Reed if he will return them to Mr. Syracuse of South Pacific.

The Court: I just wanted the record to show that we have considered whether we need to keep these exhibits. There was another accounting book of South Pacific, Exhibit I. During the recess the Court examined that book. Again these are Mr. Burrell's exhibits.

(Testimony of Cyrus Sterns.)

I would like for you to step forward, please, and see what has been taken out of that binder. The Court, during the recess, stated to counsel for both parties that all fragments of evidence would be helpful to the Court.

There are some sheets there that show deposits in the bank account of South Pacific during the period in—the very first page, Mr. Burrell,—during the months in 1943 and [356] 1944 when South Pacific was in business.

Mr. Radke believed that some other ledger sheet should be included. Why are you suggesting that the other ledger sheet be included, Mr. Radke?

Mr. Radke: It is a complete transcript of the books. In other words, it is a summary of all the individual sheets that might be beneficial, and it might not.

The Court: What detail appears on those other sheets with respect to transactions?

Mr. Radke: The accounting for the cash that was collected and the disposition of it into the bank account.

The Court: What kind of accounting? What just exactly do those sheets show?

Mr. Radke: The general ledger sheet, we have a cash account which is in, all items of cash taken in are debited to the cash account.

The Court: You know what we are concerned with in this case. Do those sheets give names?

Mr. Radke: No, they do not.

The Court: The deposits in the bank account of

(Testimony of Cyrus Sterns.)

South Pacific are helpful to the Court because we have an agent's report in which he credits Mr. Sterns with having made some payments to South Pacific. Presumably those payments went into South Pacific's bank account.

Mr. Radke: That is right. [357]

The Court: I asked during the recess if counsel had any checks, canceled checks of Mr. Sterns' in amounts which were the same as the amounts of deposits in the bank account of South Pacific, and Respondent's counsel produced some checks.

Mr. Radke: That is right.

Mr. Burrell: And they are offered in evidence now, your Honor.

The Court: Where are they?

Mr. Burrell: They are one of these late exhibits.

The Court: They are already in evidence?

Mr. Burrell: Yes, they are the cashier's check which we offered.

The Court: They are the cashier's check. I should think the first two pages would be enough.

Mr. Burrell: Yes, that is the opinion of the Respondent.

The Court: Are they, Mr. Burrell?

Mr. Burrell: Yes.

The Court: Let the Court have those first two pages of Exhibit I. The first two sheets show totals per month?

Mr. Radke: Concisely.

The Court: You never said it. The other sheets

(Testimony of Cyrus Sterns.)

show the details in a month, that make up the total for a month? [358]

Mr. Radke: Yes, separate deposits.

The Court: It would be nice if you could express yourself better. That whole thing is received as Exhibit I.

Mr. Burrell: May I return this last exhibit to Mr. Reed, to account to the South Pacific Wholesale Company?

The Court: Yes. You will deliver that to South Pacific?

Mr. Reed: Yes.

The Court: Is there anything else?

Mr. Burrell: Nothing from the Respondent. We rest.

The Court: Can you think of anything else, Mr. Reed?

Mr. Reed: I would like to ask Mr. Sterns just when the accounts were kept regarding refund by cash and refund by check.

The Witness: I had a little memorandum book and as I would make the refunds in the daytime, I would come back at night and enter them into this book.

Mr. Reed: That is all.

The Court: May I have the book, please, to give to the Clerk? Mr. Sterns has some checks here on the witness bench. Are these checks that should come in, Mr. Reed?

Mr. Reed: The Petitioner's opinion is that Respondent doesn't give him credit for these checks,



(Testimony of Cyrus Sterns.)

principally payable to cash, in the Bank of America.

The Court: You decide whether you want to put them [359] in. Now is your chance.

Mr. Burrell: What are they?

Mr. Reed: Here is a check payable to the Bank of America in the amount of \$13,835.36.

Mr. Burrell: What do they represent?

Mr. Reed: Mr. Sterns, what does this check represent?

The Witness: That was a check I gave South Pacific for \$31,363.81, cashier's check to South Pacific, cashier's check, November 14, 1943, \$17,403.00. That is where a lot of the deposits I put in the bank went to.

### Redirect Examination

Q. (By Mr. Reed): Explain that check in the amount of \$3,000.00 payable to Cy Sterns, endorsed by Cy Sterns, dated April 29th, what is that?

A. That is one of those checks I had to draw for cash to make some refunds in and around that time.

Q. I show you this check dated December——

The Court: In order to keep the record straight, before you go any further, will you please have those first two checks marked for identification?

Mr. Burrell: He may have them all put in one group, if he wishes. I have no objection to their going in. I don't know what they prove. [360]

The Court: We have two checks that are explained. Each of those checks will be——

(Testimony of Cyrus Sterns.)

The Clerk: 20 is the next number.

The Court: There will be no 18 and 19.

Mr. Reed: I offer Petitioners' Exhibit for identification No. 20 in evidence and ask it be received.

Mr. Burrell: No objection.

The Court: 20 is received in evidence.

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 20.)

Q. (By Mr. Reed): Mr. Sterns, I show you this check dated December 15, 1943, payable to cash in the amount of \$3,000.00, endorsed by Cy Sterns. What does it represent?

A. Cashier's check to South Pacific, No. 8570, cash \$7,000.00, and attached check \$3,000.00, to give them the check for \$10,000.00.

Q. Mr. Sterns, I show you——

The Court: What was that for?

The Witness: Well, that was to possibly either advance for a payment on liquor that was coming in——

Mr. Burrell: In the first instance, it was to purchase a cashier's check, wasn't it, Mr. Sterns?

The Witness: That is right. And then I gave them the check and they went over to their bank at Hollywood. [361]

Mr. Burrell: That would be one of the cashier's checks which the Respondent has already introduced.

The Witness: I don't know.

Mr. Burrell: I think the record will show that.

(Testimony of Cyrus Sterns.)

The Court: That will be 21.

Mr. Burrell: No objection.

(The document above referred to was received in evidence and marked Petitioners' Exhibit No. 21.)

The Witness: On December 10th a cashier's check 8519. I have an item here for invoice, which was \$30,400.00, and I drew this check and evidently gave them the difference in cash.

Q. (By Mr. Reed): What is the amount of this check? A. \$7,800.00.

Q. The date? A. December 10, '43.

Q. Payable to?

A. I drew the cash and gave them the cash.

Q. What is the date of this check, Mr. Sterns?

A. November 16th.

Q. Amount? A. \$12,000.00.

Q. Payable to whom?

A. South Pacific, cashier's check 8271. [362]

Q. Who is the check payable to?

A. To me, and I used the cash to get a cashier's check for \$21,368.81; cashier's check for South Pacific.

Mr. Burrell: No objection.

The Court: One of those will be 22 in evidence, and the other is 23 in evidence.

(The documents above referred to were received in evidence and marked Petitioners' Exhibits Nos. 22 and 23.)

Mr. Reed: That is all.

(Testimony of Cyrus Sterns.)

Recross Examination

Q. (By Mr. Burrell): You just testified a few minutes ago, in making the entries regarding your refund, particularly your cash refund, you made a notation in a little black book.

A. In scratch paper during the day.

Q. Do you have those here in court?

A. I don't have them. I may have them somewhere around.

The Court: Do you have them in court?

The Witness: No.

Q. (By Mr. Burrell): The entries you made in the black book, which has been introduced and referred to from time to time, are not your original entries but copies from your memos you referred to? [363]      A. Yes.

Mr. Burrell: That is all.

The Witness: I didn't carry the book in my pocket.

Q. (By Mr. Burrell): Your answer is yes?

A. Yes. I have the receipts to show for those.

The Court: You don't have them here in court?

The Witness: I have some of them.

The Court: If you have anything here you want to put in this record, please put it in now. Do you have receipts, Mr. Reed?

Mr. Reed: We would like—we do have some receipts, your Honor, but I believe the evidence in the record is sufficient to——

The Court: You are taking a little responsibility there. The Court is giving you an opportunity to



(Testimony of Cyrus Sterns.)

put in everything that will help you discharge your burden of proof. You have put in not very much evidence.

A few minutes ago the witness said that he had checks covering refunds. He had receipts for refunds. He had checks made to cash. And counsel, the witness stated those were in the courtroom, and counsel started to look for them.

In order that we may complete the record on those items, have you located any checks or receipts? [364]

Mr. Reed: Yes, your Honor.

The Court: For refunds?

Mr. Reed: Yes.

The Court: What is your problem there? They haven't been totaled or would it take a while to identify them?

Mr. Reed: It would take a long time to identify all of these, I am sure.

The Court: Well, you can come in tomorrow afternoon and present those, after you have analyzed them. I would rather be finished now.

Mr. Burrell: So would Respondent, your Honor.

The Court: All right.

Mr. Reed: I am satisfied our files have been torn to pieces so much that we be given the opportunity to go through them again, if the Court feels this particular evidence is desirable.

I felt the black book there, being original books of entry, made the same day in the course of busi-

(Testimony of Cyrus Sterns.)

ness, that it was of great probative value. I felt it was sufficient proof of these matters.

The Court: I think you better put them in if you have them.

Mr. Burrell: Well, Mr. Reed has handed to me here a group of checks. I don't know what they are at this moment. [365]

The Court: Can he see them?

Mr. Burrell: I am willing to let them go in for your Honor's study. You have totaled these checks and invoices, Mr. Reed? Are they more than the agents have allowed for refunds? The ones you have here, are they more than the agents have allowed?

Mr. Reed: In some instances they are, yes. I believe we have greater checks for refunds than the agent has allowed in that report.

Mr. Burrell: In the case of receipts——

Mr. Reed: In the case of receipts I believe some of these receipts are misplaced and they do not total what has been testified to by the Petitioner.

The Court: These checks entitled 1944 Refunds, totaling \$17,325.10, and received in evidence as Petitioners' next exhibit, which is Exhibit 24——

Mr. Burrell: May the record show I am not objecting to their admissibility. I would like to question the validity in the brief, because I don't know whether they can actually be proven to be refunds.

The Court: All right.

(Testimony of Cyrus Sterns.)

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 24.)

The Court: Now, what else have you? The next are some pieces of paper with an adding machine tape, supposed to [366] represent receipts for cash refunds in the amount of \$10,465.35. I suppose you have the same comment to make?

Mr. Burrell: I would like to interpose the same comment, your Honor.

The Court: It is received for whatever it is worth as Exhibit 25.

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 25.)

The Court: Here is another item of 1943 refund checks. It is offered as 26. Do you have the same comment?

Mr. Burrell: Same comment, your Honor.

The Court: Received as Exhibit 26.

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 26.)

The Court: Some small pieces of paper, supposed to represent refunds, received as Exhibit 27.

(The documents above referred to were received in evidence and marked Petitioners' Exhibit No. 27.)

The Court: I believe that is all.

Mr. Reed: That is all, your Honor.

Mr. Burrell: Respondent has nothing further, your Honor.

The Court: You may step down, Mr. Sterns.

(Witness excused.)

Mr. Burrell: Respondent will make this comment at [367] this time for the record, your Honor: Last week we mentioned that we would like to discuss with our office the desirability on our part of filing a brief in this case. At this time we will state we have no particular desire and leave it to the discretion of the Court.

The Court: Mr. Sterns, the Internal Revenue Code requires that citizens keep adequate books and records of their business transactions. No matter what the outcome of this case is, the Court believes that you are subject to severe criticism and censure for your extreme carelessness in your responsibility in failing to keep adequate books and records of your business transactions.

Whatever trouble you may have had as a result can only represent something that you have brought upon yourself. You have caused a great many busy people to have to take their time to try to solve your problems, which a responsible person would never have found it necessary to do. You have been exceedingly irresponsible.

I think you had better file briefs in this case. The original brief of the parties will be due on January 14th.

Mr. Burrell: January 14th, your Honor?

The Court: Yes. That gives you plenty of time.



And the reply briefs will be due February 20th. You don't have to file long briefs. You can file memoranda and make whatever comment you think you need to make on the record [368] which has been made.

Mr. Burrell: Thank you, your Honor.

(Whereupon, at 5:00 o'clock p.m., Tuesday, October 27, 1953, the hearing in the above-entitled matter was closed.)

[Endorsed]: Filed November 25, 1953.

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[Endorsed]: No. 14740. United States Court of Appeals for the Ninth Circuit. Ruth Sterns, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Cy Sterns, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: April 25, 1955.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

No. 14740

RUTH STERNS, et al.,                      Appellants,  
vs.  
COMMISSIONER OF INTERNAL REVENUE,  
Appellee.

In this appeal herein, appellants will contend that The Tax Court of the United States erred in the following respects:

1. In allowing appellee to determine appellants' taxable income for the calendar years 1943 and 1944 by the bank deposit method.
2. In allowing appellee to determine appellants' income tax for the years 1943 and 1944 by a reconstruction of appellants' income from the bank deposit method without requiring appellee to support such determination by corroborating evidence.
3. In refusing to allow appellants to establish their taxable income for the years 1943 and 1944 by the use of the net worth increase method.
4. In determining as a matter of law that appellants had not met their burden of proof in establishing substantial error in the determination of the taxable income of appellants by appellee.
5. In determining as a matter of law that appellee had met his burden of proof in establishing the fraudulent intent to evade income tax for the

years 1943 and 1944 of appellant Cyrus Sterns, and in further determining that part of the deficiency in appellant Cyrus Sterns' income tax for the calendar years 1943 and 1944 was due to fraudulent intent to evade income tax.

6. In that the decision of the Tax Court of the United States is contrary to and unsupported by the facts and the evidence.

7. In that the Tax Court erred as a matter of law in not holding and determining that there is no deficiency in the income tax of appellants for the years 1943 and 1944.

8. In that the Tax Court erred by participating excessively during the trial of the case in a manner which was prejudicial to appellants.

9. In determining as a matter of fact that appellants' net income for the years 1943 and 1944 was in the amounts of \$160,492.21 and \$75,615.24, respectively, instead of the sums of \$10,204.61 in the year 1943, and a loss of \$2,881.18 in 1944, as reported by appellants in their United States Income Tax Returns for the respective years.

10. In admitting into evidence a certified copy of the judgment and conviction of Cyrus Sterns for violation of the Emergency Price Control Act of 1942, as shown on pages 82 and 83 of the transcript of the evidence; and in finding as a matter of fact upon such evidence that appellant Cyrus Sterns was convicted in the United States District Court for the Northern District of California of violating the Emergency Price Control Act of 1942; and in determining that as appellant was convicted in 1946

of violating the Emergency Price Control Act of 1942, the violation having occurred in 1944, that large sums of money were unquestionably received by appellant in connection with the operation of his business in 1943 and 1944.

Pursuant to rule 75 (a) of the Federal Rules of Civil Procedure, and rule 17 (6) of the Rules of Practice of the United States Court of Appeals for the Ninth Circuit, the appellants hereby designate for inclusion in the record on appeal to the said United States Court of Appeals for the Ninth Circuit the following portions of the records, proceedings and evidence in the action:

1. Pleadings before the Tax Court as follows:

(a) Petition.

(b) Answer.

(c) Petitioner's reply.

(d) Motion to vacate decision and for reconsideration by the full court.

(e) Brief for petitioner in support of motion to vacate decision and for reconsideration by the full court.

(f) Petitioner's brief, respondent's brief, and petitioner's reply brief.

2. The findings of fact and opinion of the Tax Court.

3. The decision of the Tax Court.

4. The petition for review.

5. The official transcript of oral testimony with exhibits thereunto attached.



6. This designation of contents of record on review, the above being the full and entire record in this matter before the Tax Court of the United States.

Dated at Los Angeles, California, this 28th day of June, 1955.

/s/ ORVILLE W. McCARROLL,  
Attorney for Appellants

Affidavit of Service by Mail attached.

[Endorsed]: Filed Jun. 29, 1955. Paul P. O'Brien,  
Clerk.

